

***United States Court of Appeals
for the Second Circuit***



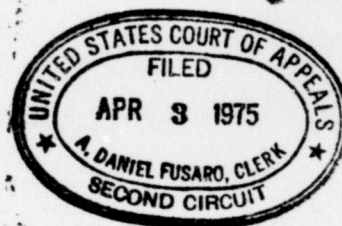
APPENDIX

*Proof of service
attached.*

74-2550

B P/S

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT



BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Appellants,

-against-

DASA CORPORATION and
ARTHUR ANDERSEN & CO.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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4

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PAGINATION AS IN ORIGINAL COPY

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* Designated for the appendix by appellee Dasa. Rejected as unnecessary by appellants and advance of appendix costs demanded by 3/30/75 pursuant to FRAP 30(b). Included in original record as Doc. 14 and as part of Dasa's exhibits in support of their motion for summary judgment below.

** Four copies of exhibits filed as exhibits to appendix pursuant to FRAP 30(e).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BROWNING DEBENTURE HOLDERS' COMMITTEE, :
et al., : UNITED STATES DISTRICT COURT
Plaintiffs, : SOUTHERN DISTRICT OF NEW YORK
-against- :
CASE NO. 72 CIV. 1332
DASA CORPORATION, et al., :
USCA 74-2550
Defendants. :
judge Owen

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUL 27 1972

72 CIV. 133

D. C. Form No. 105 Rev.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPEARANCES

For plaintiff:
WILLIAM J. SOUTHER
292 Madison Avenue,
N.Y.C. N.Y. 10017

For defendant: Jacobs Persinger &
(for dft DASA Corp) 70 Pine St.
344 1866

Sullivan & Cromwell (for Bank of
48 Wall St. NY 10005 HA-2-8100
Breed Abbott & Morgan (Arthur
& Co) 1 Chase Manhattan Plaza
944 4800

Plaintiff seeks judgment and an order for the following:
on behalf of itself, of its Holders and of
all other Holders of its Convertible
Subordinated Debentures Due July 1, 1977
of Dasa Corporation (the "Debentures"), and
a Class, and also Derivatively on behalf
of Dasa Corporation; STEPHEN C. BROWNING,
on behalf of himself, individually, of
himself as a Member of the Browning
Debenture Holders' Committee, and on
behalf of all other Holders of the
Debentures, as a Class, and also
Derivatively on behalf of Dasa Corporation;
and ROY M. BREWER, on behalf of himself
individually as a Common Stockholder of
Dasa Corporation, on behalf of all other
Common Stockholders of Dasa Corporation as
a Class, and also Derivatively on behalf
of Dasa Corporation, of himself individ-
ually, of himself as a Member of the
Browning Debenture Holders' Committee, and
on behalf of all other Holders of the
Debentures as a Class, and also Derivat-
ively on behalf of Dasa Corporation; and
himself, individually, of himself as a
Member of the Board of Directors of Dasa
Corporation; ROBERT A. HUNTER and ROBERT B.
STEIN, JR., individually and as Directors
of Dasa Corporation; LOUIS A. PERINI,
individually and as a Director and
Chairman of the Board of Directors of Dasa
Corporation; RICHARD A. REICHTER,
individually and as President and Chief
Executive Officer of Dasa Corporation;
RONALD W. BOLIVAR, individually and as a
Director, Executive Vice President and
Treasurer of Dasa Corporation; ROBERT J.
DABENCLER and GILBERT C. MAUER, individ-
ually and as Officers and former Directors
of Dasa Corporation; E. NORMAN LARRETT,
CHARLES H. LINCHENHEID and JOHN J. DENNEEN,
JR., individually and as Officers of Dasa
Corporation; ROBERT G. WILSON, individ-
ually and as a former Officer and Director
of Dasa Corporation; and THE BANK OF
NEW YORK, Trustee under the Indenture
dated as of July 1, 1957 between The Bank
of New York and Dasa Corporation (the
"Indenture");

DATE	NAME OR RECEIPT NO	REC.
7/27/72	Handl'd	15-
7/27/72	457 Rec	15
5/25/72	Handl'd	5-
5/26/72	457 Rec	

ONLY COPY AVAILABLE

BROWNING DEBENTURE HOLDERS' COMMITTEE, et al vs. DASA CORP., et al

(Class Action)

72 CIV. 133

Date: Order
Judgment: K

PROCEEDINGS

DATE		
MAR30-72	FILED COMPLAINT. ISSUED SUMMONS.	
MAR31-72	FILED ORDER TO SHOW CAUSE RE: DEF. DASA CORP. ORDERED DFT. 4/4/72	
Apr. 4-72	Filed stipulation adjourning action new ret. 4/4/72 to 4/11/72.	
Apr 26-72	Filed First Amended Complaint - Class Action.	
Apr 28-72	Filed Memorandum Endorsed on Unsigned Order. The Court has been advised that an amended complaint has been served and that this application has become moot and is withdrawn. McLean J. (mailed notice)	
May 4-72	Filed Order. Ordered that dft. DASA Corp's time to answer to complaint to 5/22/72. Motley J.	
May 8-72	Filed Memorandum of Law.	
May 8-72	Filed Affidavit of Richard B. Persinger in support of DASA's application for prompt consideration, etc.	
Apr. 11-72	Filed (in court) Memorandum of Law.	
Apr. 10-72	Filed Memorandum in opposition to pltf's motion for temporary injunction.	
Mar. 31-72	Filed Memorandum of Law.	
May 8-72	Filed Memorandum in support of dft. DASA Corp.'s application for determination of plaintiffs' motion for pre.inj.	
May 8-72	Filed OPINION #38475. Motley, J. The court finds that plaintiffs have shown none of the prerequisites for a preliminary injunction and therefore denies the motion. (mailed notice).	
May 9-72	Filed ANSWER of dft. The Bank of New York to the First Amended Complaint.	S&C
May 12-72	Filed Stip & Order extending time for dft. Arthur Andersen & Co., to answer to complaint to 5/22/72. So Ordered Lasker J.	
MAY 19-72	Filed summons with marshal's return. Served Dasa Corporation by Dan F. Murphy on 4/6/72.	
	Also served The Bank of New York c/o Olin, Murphy, Manuel & Lynch Esqs. by Peter Esquerria on 4/11/72.	
	" " Arthur Andersen & Co. by Marjorie Peebles on 4/18/72.	
May 22-72	Filed Dft. DASA Corp., ANSWER.	JP& BA&M
May 24-72	Filed Dft. Arthur Anderson & Co., ANSWER.	
May 25-72	Filed Notice of Appeal. (mailed notice)	
May 19-72	Filed Order to show Cause re: Class Action. ret. 4/6/72. (by pltf.)	
Jun 1-72	Filed Memorandum of dft. the Bank of N.Y. in opposition to pltf's motion for a determination that this action be maintained as a class action.	
Jun 2-72	Filed Memorandum of Law in opposition to dft's motion for determination of class action.	
Jun 6-72	Filed Memorandum of Law by Pltffs.	
Apr 10-72	Filed Affidavit in opposition by Richard A. Reichter.	
Jun 12-72	Filed Pltffs. Memorandum of Law.	
Jun 15-72	Filed Undertaking for costs on appel Bond No. 2403857. in the amt. of \$250. by National Surety Corp.	
Jun 27-72	Filed Certified Record on Appeal to the U.S.C.A.	
Aug 28-72	Filed Pltffs Interrogs directed to Dasa Corp.	
Sept 1-72	Filed stip adjourning Motion for Class Action ret 9/5/72 to 10/3/72 10/3/72.	
Sep. 25-72	Filed affcyt & notice of motion to vacate interrogatories. ret: 10-3-72 for Left DASA.	
Sep. 25-72	Filed memorandum of law in support of motion. for dft DASA	
Sep 26-72	Filed motion that the return date of pltf's class action motion is adjourned to 10/3/72.	
Oct 17-72	Filed True copy of USCA. Order that the Appeal is dismissed for lack of prosecution Fusaro, Clerk.	
Dec 5-72	Filed dft DASA Corp. answers to pltffs Interrogatories.	
Dec 5-72	Filed dft dasa corp. objections to pltffs interrogatories	

cont'd on page 2

DATE	PROCEEDINGS	De Jud
Jan 16-73	Filed memo endorsed on Order to Show Cause of 5/19/72. Following review of papers filed to date on this motion and following hearings with counsel, I am deferring final determination of whether this is or is not a proper class action until further discovery proceedings have been completed and further pre-trial hearings have been held to narrow or eliminate issues. So Ordered Griesa J. m/n	
Jan 29-73	Filed deft. Bank of N.Y. notice of motion. Re; Undertaking for costs, ret before Griesa J. on 2/5/73.	
Jan 29-73	Filed deft Bank of New York's memo in support of its motion.	
Feb 6-73	Filed Pltffs affidavit in opposition by Bradley R. Brewer.	
Feb 8-73	Filed memo endorsed on motion papers file dtd 1/29/73. Motion denied without prejudice to renewal at a later stage after further discovery has been completed.	
Feb 26-73	So Ordered Griesa J. m/n/ Filed Pltffs notice of motion, Re: Partial Summary Judgment, ret before Griesa J. on 3/8/73	
Feb 26-73	Filed Pltffs memo of law in support of its motion.	
Mar 1-73	Filed stip & order that pltffs motion for an order granting partial summary judgment is adjourned until 3/29/73. So Ordered Griesa J.	
Mar 21-73	Filed deft's notice of motion, Re: Summary Judgment, ret before Griesa J. on 3/29/73	
Mar 21-73	Filed Deft's Dasa Corp's memo in support of its motion for summary judgment	
Apr 4-73	Filed Stip and Order that the pltffs' motion for an order, per to Rule 56(a) FRCP granting partial summary judgment to pltffs is ajd'd to 4-27-73 etc. GRIESA, J.	
Apr 26-73	Filed Pltff's Statement pursuant to rule 9(g).	
May 4-73	Filed deft. Dasa Corp's response to pltffs rule 9(g) statment.	
May 4-73	Filed deft. Dasa Corp's reply memo of law.	
May 1-73	Filed Pltff's memo of law, in opposition to deft. Dasa Corp's motion for summary Judgment.	
Apr 23-73	Filed Affdvt of James D. Zirin in opposition to pltffs' motion for partial summary judgment on claims 1 & 2.	
May 3-73	Filed Stip and Order that the pltff's motion for order to Rule 56(a) & (d) FRCP granting partial summary judgment to pltffs is adj'd to 5-4-73, etc. GRIESA, J.	
May 9-73	Filed stip and order that the deft. Bank of N.Y. has no relief sought against it under claims 1-2 of the first amended complaint, also they are not required to file a 9(g) statment. So Ordered Griesa J.	
Aug 13-73	Filed pltffs' request for admission of facts, No. 1.	
Sep 11-73	Filed stip and order extendint time for DASA to respond to pltf. request for admission until Sep. 26-73. GRIESA, J.	
Oct. 1-73	Filed memorandum that pltffs' motion for partial summary judgment and other relief under F.R.C.P. 16 with respect to claims 1 and 2 is denied, motions of defts. DASA and Arthur Andersen & Co. for summary judgment on claims 1 and 2 are granted and said claims are dismissed. So ordered-Griesa, J.-mailed notice	
Sep. 27-73	Filed deft's (DASA) statement in response to request for admission of facts.	
Oct. 23-73	Filed pltffs' notice of appeal from order filed 10-1-73-mailed notice to Jacobus Persinger & Parker; Sullivan & Cromwell; Breed Abbott & Morgan.	
Jan. 22-74	Mailed notice of reassignment.	
3/3/74	pre-trial before Court of the action; Pltffs' Class Action Motion	
Mar 14-74	Filed Pltffs' motion for summary judgment on claims 1 & 2.	
Mar 22-74	Filed Pltffs' motion for summary judgment on claims 1 & 2.	
Mar 22-74	Filed Pltffs' motion for summary judgment on claims 1 & 2.	

Continued

DATE	PROCEEDINGS	Date of Judgment
Mar 25.74	Filed Memorandum of the Court of N.Y. pursuant to this court's direction.	
Mar 26.74	Filed Deft. Dasa Corp. N.Y. Notice of renewal & Affidavit. Ret. 4/5/74.	
Jul 16.74	Filed Opinion #40970. Pltffs. motion for reconsideration of decision of Judge Greisa is denied. I grant pltffs. motion to certify the order of 9/27/73 of Judge Greisa as a final order pursuant to that rule. However I deny pltffs. motion authorizing an interlocutory appeal. I deny pltffs. motion for a Class action status. Pltffs. motion to represent the stockholders is denied as moot. The motion of the Bank of New is denied in my discretion. The Courts determination on each of the foregoing motions is so ordered. Owen J. (mailed notice)	
Jul 17.74	Filed Amended Notice of Motion & supporting affidavit, Re: Depositions. ret. 8/23/74. (by Pltffs.)	
Jul 17.74	Filed Pltffs. proposed findings of fact with respect to claim 3.	
Jul 18.74	Filed Pltffs. Rebuttal Memorandum.	
Jul 26.74	Filed Memorandum of Deft. Dasa Corp. in opposition to pltffs. motion for an order directing that depositions be taken through the use of tape recording & for a pre trial Order.	
9/12/74	<i>P.T.C. HRS</i>	
Sep. 16-74	Filed order of dismissal with permission to the pltff. to move to vacate dismissal within 30 days--Owen, J. ---Mailed notices.	
Oct. 9-74	Filed pltff's affdvt & notice of motion to vacate dismissal-Ret. 10-11-74.	
Oct. 9-74	Filed deft's (DASA) memorandum in opposition to motion to vacate.	
Oct 11.74	Filed Memo. End. on motion dtd 7/17/74. Motion is denied. Owen J. (mailed notice)	
Oct 11.74	Filed Memo. End on motion dtd 10/11/74. In accordance with my order of 9/12/74, I consider the order of dismissal & return the action to its previous position before me. In so doing I expressly reject certain statements made in the supporting papers herein. So Ordered Owen J.	
Oct 15.74	Filed Judgment dismissing the complaint as to Claims 1 & 2 on the merits. Owen J. (mailed notice)	
Nov 8.74	Filed Pltffs. Notice of Appeal from the Judgment dtd. 10/15/74. (mailed notice)	
Oct-11-74	FILED NOTICE OF MOTION TO VACATE ORDER TO DISMISS (COPY)	
Jan 5-72	<i>Filed deft's memo of law in opposition to plff motion</i>	

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BROWNING DEBENTURE HOLDERS' COMMITTEE, on :
behalf of itself, of its Members and of :
all other Holders of 6% Convertible :
Subordinated Debentures Due July 1, 1987 :
of Dasa Corporation (the "Debentures"), as :
a Class, and also Derivatively on behalf :
of Dasa Corporation; SIMMS C. BROWNING, :
on behalf of himself, individually, of :
himself as a Member of the Browning :
Debenture Holders' Committee, and on :
behalf of all other Holders of the :
Debentures, as a Class, and also :
Derivatively on behalf of Dasa Corporation; :
and ROY E. BREWER, on behalf of himself :
individually as a Common Stockholder of :
Dasa Corporation, on behalf of all other :
Common Stockholders of Dasa Corporation as :
a Class, and also Derivatively on behalf :
of Dasa Corporation, of himself individ- :
ually, of himself as a Member of the :
Browning Debenture Holders' Committee, and :
on behalf of all other Holders of the :
Debentures as a Class, and also Derivat- :
ively on behalf of Dasa Corporation and of :
himself, individually as a holder of both :
the Debentures and Common Stock of Dasa :
Corporation and of all other Common Stock- :
holders of Dasa Corporation who are also :
Holders of the Debentures, as a Class, and :
also Derivatively on behalf of Dasa :
Corporation; :

Civil Action
File No. 72 CIV. 1332

FIRST AMENDED
COMPLAINT-CLASS ACTION

Plaintiffs, :

- against - :

DASA CORPORATION; ERNEST T. GREEF, ROBERT :
LE BUHN, RODERICK A. MUNROE and EDGAR B. :
STERN, JR., individually and as Directors :
of Dasa Corporation; LOUIS R. PERINI, :
individually and as a Director and :
Chairman of the Board of Directors of Dasa :
Corporation; RICHARD A. REICHTER, :
individually and as President and Chief :
Executive Officer of Dasa Corporation; :
RONALD W. BOLIVAR, individually and as a :
Director, Executive Vice President and :
Treasurer of Dasa Corporation; ROBERT J. :
DAESCHLER and GILBERT C. MAURER, individ- :
ually and as Officers and former Directors :
of Dasa Corporation; E. NORMAN BARRETT, :
CHARLES H. ZIEGENBEIN and JOHN J. DENEEN, :
JR., individually and as Officers of Dasa :
Corporation; ROBERT G. WILSON, individ- :
ually and as a former Officer and Director :
of Dasa Corporation; ARTHUR ANDERSEN & CO., :
Auditors of Dasa Corporation; and THE BANK :
OF NEW YORK, Trustee under the Indenture :
dated as of July 1, 1967 between The Bank :
of New York and Dasa Corporation (the :
"Indenture"); :

Defendants. :

COMPLAINT

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Claim 1:	
Violations of Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 77n(a) and Rule 14a-9 of the Securities and Exchange Commission thereunder.	
False and Misleading Statements in and Omission of Material Statements of Fact from the Proxy Materials.	25
Claim 2:	
Violations of Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 77n(a) and Rule 14a-3(b)(2) of the Securities and Exchange Commission thereunder.	
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Claim 3:	
Violations of Sections 14(a) of the Exchange Act, Rule 14a-9 and 14a-3(a) of the SEC thereunder, and Section 323 of the Trust Indenture Act of 1939 (15 U.S.C. Sec. 77 www(a)).	
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Violations of Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 77n(a) and Rule 14a-3(b)(2) of the Securities and Exchange Commission thereunder.

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VERIFICATION.	last
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APPENDIX - EXHIBITS

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F. Letter of Maull & Soeiro, Esqs. to The Bank of New York, dated February 16, 1972	vi
G. Indenture dated as of July 1, 1967 between The Bank of New York and Dasa Corporation.	vii

II soliciting their consent to an amendment of the Indenture cover-

A. JURISDICTION

(1) Jurisdiction. This action arises:

(A) in Claim 1 thereof, under Section 14(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. Sec. 78n(a)) and under Rule 14a-9 of the Securities and Exchange Commission thereunder ("SEC"); subject-matter jurisdiction of this Court over Claim 1 exists under Section 27 of the Exchange Act (15 U.S.C. Sec. 78aa);

(B) in Claim 2 thereof, under Section 14(a) of the Exchange Act and under Rule 14a-3(b)(2) of the SEC thereunder; subject-matter jurisdiction of this Court over Claim 2 exists under Section 27 of the Exchange Act; and

(C) in Claim 3 thereof, under Section 14(a) of the Exchange Act, under Rule 14a-9 of the SEC thereunder and under Section 323 of the Trust Indenture Act of 1939 (the "Trust Indenture Act") (15 U.S.C. Sec. 77 www(a)); subject-matter jurisdiction of this Court over Claim 3 exists under Section 27 of the Exchange Act and under Section 322(b) of the Trust Indenture Act (15 U.S.C. Sec. 77vvv(b));

(D) in Claim 4 thereof, under Section 323 of the Trust Indenture Act; subject-matter jurisdiction of this Court over Claim 4 exists under Section 322(b) of the Trust Indenture Act;

(E) in Claim 5 thereof, under Section 14(a) of the Exchange Act and under Rule 14a-3(b)(2) of the SEC thereunder, subject-matter jurisdiction of this Court over Claim 5 exists under Section 27 of the Exchange Act and the pendent jurisdiction of this Court; and

(F) with respect to the relief in the nature of a declaratory judgment herein requested, under 28 U.S.C. Sec. 2201.

(2) Jurisdictional Amount. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000.00).

B.

CLASS ACTION ALLEGATIONS

(3) Reference to Federal Rule 23(b).

Plaintiffs claim this action to be maintainable as a class action under Federal Rule 23(b) (1) (B), 23(b) (2) and 23(b) (3), Fed. R. Civ. P.

(A) Rule 23(b) (2) is applicable to this action because DASA Corporation (hereinafter referred to as "DASA" or the "Corporation") has acted or refused to act on grounds generally applicable to the classes represented by plaintiffs, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each such class as a whole, in that it has (a) conducted its 1972 Annual Meeting of Stockholders over the objections of plaintiff Roy E. Brewer to the validity (i) of the meeting and (ii) of the proxies held by management at that meeting due to certain alleged violations of the Section 14(a) of the Exchange Act and of the SEC Proxy Rules; (b) refused to (i) adjourn said Annual Meeting for a period of 60 days and (ii) within such 60 day period submit to the shareholders of DASA (hereinafter referred to as the "shareholders") new proxy material correcting the violations of law alleged by Mr. Roy E. Brewer; (c) refused to act upon the proposal made by plaintiffs that all officers and directors who own shares of DASA Common Stock or rights, options or warrants to purchase such shares be required to disqualify themselves from participation in the Corporation's decision to fix a proposed new conversion price for the Debentures to be offered to the Debenture holders in exchange for their consent to the sale of a substantial portion of DASA's assets consisting of IBM computer systems; (d) refused to obtain the opinion of a qualified and independent expert outside the Corporation with respect to the proper range of prices within which the proposed new conversion price should fall; (e) refused to afford plaintiffs an opportunity to insert in DASA's solicitation

letter dated 3/9/72 to Debenture holders a statement by plaintiffs asking other Debenture holders not to approve the proposed sale of computer assets unless the proposed new conversion price was both (i) acceptable to plaintiffs and (ii) between \$6.00 and \$12.00; (f) refused to reduce the proposed new Debenture conversion price to a figure between \$6.00 and \$12.00 and acceptable to plaintiffs as representatives of the Debenture holders as a class; (g) refused to permit plaintiffs to examine, prior to its distribution to Debenture holders, a copy of the text of DASA's solicitation letter, to enable plaintiffs to comment on possible material omissions and false or deceptive statements therein; (h) mailed to the Debenture holders a consent solicitation letter dated 3/9/72 and form of "consent" which contained (as alleged in Claim 3 below, par.

(22)) (i) omissions of material statements of fact and (ii) false and misleading statements; (i) stated, in said solicitation letter, its intention to consummate its proposed amendments to the Indenture and proposed sale of computers to Datatron Corporation immediately upon receipt of "consent" forms from 66 2/3% of the Debenture holders and has, by necessary implication, indicated its intention to take (or to attempt to take) such action in complete disregard of the fact that plaintiffs have announced clearly their intention to engage in a "proxy contest" with DASA for the "consents" of the Debenture holders for the purpose of obtaining a further reduction of the proposed new conversion price to a figure considered by the plaintiffs to be fair and equitable to the Debenture holders as a class.

(B) Rule 23(b)(3) is applicable to this action because the facts and circumstances presented would justify the court in finding (1) that the questions of law and fact common to the members of the classes represented by the plaintiffs predominate over any questions of law or fact affecting only individual members of those classes and (2) that a class action

is superior to other available methods for the fair and efficient adjudication of the controversy.

(C) Rule 23(b) (1) (B) is applicable to this action because the prosecution of separate actions by or against individual members of the class would, based upon the facts and circumstances presented herein, create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

(4) Averments Required by Civil Rule 11A(b) (2) of this Court with Respect to Federal Rule 23(b).

(A) The number of holders of the Debentures is presently unknown to the plaintiffs, but such number is believed to be between 300 and 500.

(B) The number of shareholders is presently unknown to plaintiffs, but such number is believed to be in the thousands.

(C) The number of persons who hold both Debentures and Common Stock is presently unknown to plaintiffs, but is believed to be approximately fifty.

(D) The three classes of DASA security holders represented by plaintiffs are described below:

- (1) All holders of the Debentures,
- (2) All shareholders,
- (3) All holders of both Debentures and
Common Stock.

(E) Plaintiffs will, to the best of their abilities and resources, protect fairly and adequately the interests of the classes of DASA security holders described above. Plaintiffs and their attorneys have been vigorously engaged, since on or about 2/8/72, in efforts to protect the interests of such classes in connection with (1) attempting to

persuade DASA to revise and correct its shareholder proxy materials by stating necessary facts omitted and changing false and misleading statements; (2) attempting to persuade DASA to adjourn its 1972 Annual Meeting for a reasonable period of time to allow for revision of proxy materials and redistribution of them to the shareholders; (3) presenting to the SEC plaintiffs' views with respect to material omissions from and misstatements in the shareholder proxy material; (4) urging the SEC to make efforts to prevent such defects from appearing again in the DASA solicitation materials for the Debenture holders (a comparison of the two DASA solicitation documents and the proposed proxy statement of Roy E. Brewer delivered to the SEC and to DASA on 2/28/72 shows clearly the extent to which the defects pointed out by plaintiffs in the shareholder proxy materials were corrected in the DASA solicitation letter of 3/9/72); (5) attempting to obtain for review and comments a pre-distribution copy of the DASA solicitation letter to Debenture holders; (6) communicating with the office of the Secretary of State of Massachusetts for the purpose of determining the approval status before said Secretary of DASA's Annual Report of Condition and learning from such communication that DASA had been dissolved on 2/3/71 and revived on 10/1/71; (7) communicating with the Trustee for a number of purposes designed to protect the interests of such security holders; (8) in attempting to have DASA distribute to its shareholders copies of a proposed statement by Roy E. Brewer pointing out possible material defects in the DASA shareholder Proxy Statement and urging DASA shareholders to take action to prevent potentially destructive conflict between DASA management and the Committee; (9) drafting a proposed proxy statement by the Committee to the Debenture holders, submitting same to the SEC for review, submitting same to the Trustee for consideration under Section 9.02 of the Indenture, (a copy of said Indenture is attached hereto as Exhibit "G") and making preparations to have same reproduced and mailed to the Debenture holders at the

earliest possible date; and (10) preparing and commencing this action. All of the efforts listed as (1) through (10) above and numerous other efforts have been undertaken by plaintiffs and their attorneys for the purpose of protecting the interests of the plaintiffs individually and of protecting the interests of the classes of DASA security holders described above. (See letter of Maull & Soeiro, Esqs. to The Bank of New York, dated February 16, 1972, setting forth, in detail, the earliest efforts of plaintiffs. A copy of said letter is attached hereto as Exhibit "F.")

(F) The questions of law or fact claimed to be common to the classes represented by plaintiffs (as set forth above) include, but are not limited to, the following:

- (I) Were material statements of fact omitted from the DASA shareholder proxy materials and 1971 Annual Report in violation of Section 14(a) of the Exchange Act and of the SEC proxy rules thereunder?
- (II) Were material false, deceptive or misleading statements made in such proxy materials and Annual Report in violation of the Exchange Act and of such SEC rules?
- (III) If the answer to either (I) or (II) above is "yes," should the proxies obtained by DASA management through the distribution of such materials and such report be declared void?
- (IV) If the answer to (III) above is "yes," should the DASA 1972 Annual Meeting be declared void and the Corporation ordered to distribute revised corrected proxy

materials and to conduct a new 1972 Annual Meeting?

- (V) If the answer to (IV) above is "yes," should the Corporation be ordered to include in its revised and corrected proxy materials a statement proposed in violation therein by Roy E. Brewer?
- (VI) If the answer to (IV) above is "yes," should the Corporation be ordered to distribute at its expense a proxy statement submitted by Roy E. Brewer?
- (VII) Were material statements of fact omitted from the DASA solicitation letter dated 3/9/72 in violation of Section 14(a) of the Exchange Act, of the SEC proxy rules thereunder, and of Section 323 of the Trust Indenture Act?
- (VIII) Were material false, deceptive or misleading statements made in that solicitation letter in violation of said Section 14(a), of said proxy rules, and of Section 323 of the Trust Indenture Act?
- (IX) If the answer to (VII) or (VIII) above is "yes," should the "consents" obtained by DASA management through the use of that solicitation letter be declared void?
- (X) Did the Trustee have a duty imposed by either the Trust Indenture Act or by the Indenture to actively bargain and

otherwise act on behalf of the Debenture holders in connection with (i) the fixing of a proposed new Debenture conversion price and (ii) the solicitation of proxies counter to the solicitation of DASA management? For example, did the Trustee have an obligation to form an informed opinion as to the fairness of the new conversion price of \$21.00 proposed by the Corporation and to distribute that opinion to its "beneficiaries," the Debenture holders?

C. PARTIES

(5) Plaintiffs.

(a) Plaintiff BROWNING DEBENTURE HOLDERS' COMMITTEE (the "Committee") is an unincorporated organization, the purpose of which is to represent all the Debenture holders with respect to their interests with respect to the proposed sale by DASA of certain computer systems and leases thereon. The members of said Committee are: ROY E. BREWER, SIMMS C. BROWNING (both plaintiffs herein) and BRADLEY R. BREWER. The three members of the Committee own a total of \$127,000 face amount of the Debentures. ROY E. BREWER is also a shareholder, as set forth below. Plaintiff BROWNING DEBENTURE HOLDERS' COMMITTEE brings this action on behalf of itself, of its members, and of all other holders of the Debentures as a Class, and also Derivatively on behalf of DASA.

(b) Plaintiff SIMMS C. BROWNING is a citizen and resident of the State of New York, residing at 45 East End Avenue, New York, New York, and is the owner of fifty thousand (\$50,000.00) face amount of the Debentures. SIMMS C. BROWNING brings this action on behalf of himself, individually, of himself as a Member of the Committee, and on behalf of all other Holders of the Debentures, as a Class, and also Derivatively on behalf of DASA.

(c) Plaintiff ROY E. BREWER is a citizen and resident of the State of Nebraska, residing at 401 South 84th Street, Omaha, Nebraska and is the owner of (a) seven hundred (700) shares of the Common Stock of DASA and of (b) twenty-five thousand dollars (\$25,000.00) face amount of the Debentures. ROY E. BREWER brings this action on behalf of himself, individually, as a Common Stockholder of DASA, on behalf of all other

Common Stockholders of DASA, as a Class, and also Derivatively on behalf of DASA, of himself, individually, of himself as a Member of the Committee, and on behalf of all other Holders of the Debentures as a Class, and also Derivatively on behalf of DASA and of himself, individually, as a holder of both the Debentures and Common Stock of DASA, and of all other Common Stockholders of DASA who are also Holders of the Debentures, as a Class, and also Derivatively on behalf of DASA.

(6) Defendants. Upon information and belief: defendant DASA CORPORATION is a corporation, incorporated under the laws of the Commonwealth of Massachusetts, having its office and principal place of business in the State of Massachusetts at 15 Stevens Street, Andover, Massachusetts, having an office and principal place of business in the State of New York at THE BANK OF NEW YORK, 48 Wall Street, New York, New York, for purposes of its relationship with the Debenture holders and the Trustee for the Debentures under the Indenture (hereinafter said Trustee is referred to as the "Trustee"), and also transacting business in the Southern District of New York within the meaning of Section 27 of the Exchange Act; defendant ERNEST T. GREEF is a Director of DASA Corporation and is a citizen and

resident of the State of New York at 1185 Park Avenue, New York, New York; defendant ROBERT LE BUHN is a Director of DASA Corporation and is a citizen and resident of the State of New Jersey at Fawn Hill Drive, New Vernon, New Jersey; RODERICK A. MUNROE is a Director of DASA Corporation and is a citizen and resident of the State of Massachusetts at 16 Kittredge Road, Framingham, Massachusetts; LOUIS R. PERINI is a Director and Chairman of the Board of Directors of DASA Corporation and is a citizen and resident of the State of Massachusetts at the Sheraton Plaza Hotel, Boston, Massachusetts; RICHARD A. REICHTER is the President, Chief Executive Officer and a Director of DASA Corporation, and is a citizen and resident of the State of Massachusetts at 8 Rutgers Road, Andover, Massachusetts; EDGAR B. STERN, JR. is a Director of DASA Corporation and is a citizen and resident of the State of Louisiana at 6 Garden Lane, New Orleans, Louisiana; RONALD W. BOLIVAR is a Director, Executive Vice President and Treasurer of DASA Corporation who's address is unknown to the plaintiffs; ROBERT J. DAESCHLER is a Vice President and former Director of DASA Corporation and is a citizen and resident of the State of New Jersey at 30 Stewart Road, Short Hills, New Jersey; GILBERT C. MAURER is a Vice President and former Director of DASA Corporation and is a citizen and resident of the State of Connecticut at 5 Acorn Lane, Westport, Connecticut; E. NORMAN BARRETT is a Vice President of DASA Corporation who's address is unknown to the plaintiffs; CHARLES H. ZIEGENBEIN is a Vice President of DASA Corporation who's address is unknown to plaintiffs; JOHN J. DENEEN, JR. is the Controller and Assistant Treasurer of DASA Corporation who's address is unknown to the plaintiffs; ROBERT C. WILSON is a Director and former Vice President of DASA Corporation who's address is unknown to the plaintiffs; ARTHUR ANDERSEN & CO., auditors of DASA Corporation, a partnership having its office and principal place of business at 1345 Avenue of the

Americas, New York, New York; and THE BANK OF NEW YORK, Trustee for the Debentures under the Indenture, is a corporation incorporated under the laws of the State of New York having its office and principal place of business at 48 Wall Street, New York, New York.

D. ALLEGATIONS IN SUPPORT OF PLAINTIFFS'
REQUEST FOR INTERLOCUTORY RELIEF

(7) This is an action by a Committee representing the holders of certain debentures of DASA Corporation ("DASA"), and by the holders of certain securities of DASA (both common stock and debentures) suing individually, as representatives of certain classes of DASA security holders, and derivatively on behalf of DASA against D. A., its directors, its principal officers, its auditors, and the Trustee for the debenture holders under an Indenture (the "Trustee," The Bank of New York) in which the plaintiffs seek, among other things, the following relief:

(a) an order declaring the 1972 Annual Meeting of Stockholders of DASA void by virtue of certain alleged violations of the federal securities laws, the SEC proxy rules and the Massachusetts Business Corporation law;

(b) an order requiring DASA to distribute new proxy materials to its shareholders and to conduct a new 1972 Annual Meeting of Stockholders;

(c) an order declaring the solicitation letter dated March 9, 1972, and sent by DASA to its debenture holders

soliciting their consent to an amendment of the Indenture covering the debentures (I) to be in violation of Section 14 of the Securities and Exchange Act of 1934, of the SEC "proxy rules" thereunder, and of the Trust Indenture Act of 1939 and, (II) for that reason, void by virtue of the inclusion in the solicitation letter of certain false and/or misleading statements and of the omission of certain statements necessary in order to make the solicitation (or certain statements therein) not misleading and deceptive;

(d) an order restraining the defendants from counting any consents received by them from the debenture holders and based upon the DASA solicitation letter dated March 9, 1972 toward approval of (i) two proposed amendments to the Indenture covering the debentures described in the solicitation letter or (ii) the proposed sale of certain computers by DASA to Datatron Corporation (similarly described) until (I) the plaintiffs have had a reasonable opportunity to mail to the debenture holders, through the Trustee, a countersolicitation of proxies from the debenture holders based upon a proxy statement prepared by plaintiffs and (II) the debenture holders have had a reasonable period of time in which to receive the proxy materials mailed by the plaintiff committee and to consider mailing their proxy consents to the plaintiffs;

(e) an order restraining the defendants, for the duration of the reasonable period of time described in subparagraph (d) above, from proceeding with (i) such two proposed amendments to the Indenture or (ii) such proposed sale of computers to Datatron Corporation; and

(f) an order requiring DASA to distribute to the debenture holders a new and revised solicitation letter (i) including material statements of fact omitted from the solicitation

letter dated March 9, 1972, and (ii) omitting or correcting all false, misleading or deceptive statements contained in such solicitation letter and permanently enjoining DASA and the Trustee from using for any purpose consents mailed by debenture holders or received by DASA or the Trustee before the reasonable period of time described in subparagraph (d) above has ended.

(8) A temporary restraining order and preliminary injunction covering items (d) and (e) above is required by the facts and circumstances of this action to prevent the plaintiffs and the classes of persons represented by them from suffering great and irreparable damage for the following reasons:

(a) Defendant DASA has indicated unmistakably its intention to proceed as rapidly as possible with its efforts (i) to obtain "consents" from two-thirds of the debenture holders; (ii) to amend the Indenture by means of a Supplemental Indenture; and (iii) to consummate the proposed sale of computers and leases to Datatron. (See DASA's solicitation letter dated March 9, 1972 attached hereto as Exhibit "A".) Moreover, DASA has thus indicated its intention to proceed with such course of action despite the fact that plaintiffs are proceeding, as rapidly as possible in the circumstances, to complete, through the Trustee Bank, a distribution by mail of a countersolicitation requesting revocation of proxies, or consents previously given and the granting of proxies to plaintiffs.

(b) If defendant DASA succeeds in completing steps (a) (i) (ii) and (iii) above before this court has had an opportunity to make a determination on plaintiffs' requests for relief, labeled (a) through (f) above, then the transactions

here sought to be enjoined and declared void will have all taken place and, among other things, title to a very substantial portion (perhaps 30 to 50%) of DASA's tangible and saleable physical assets will have purportedly passed to Datatron Corporation (the proposed purchaser announced in the DASA solicitation letter). Thus, title to the physical assets of DASA (or res that is one of the primary subjects of this action and this motion) will have passed (at least purportedly) from DASA to Datatron, and it will, at the very least, be necessary thereafter to implead Datatron in order to give the court sufficient jurisdiction to declare void and effectively unravel the purported sale transaction. It may not even be possible, as a practical matter, for this court to obtain jurisdiction over Datatron after the proposed sale has been completed. If, for example, Datatron should have arranged for so-called "back-to-back" transfer of title to the res from Datatron to a third party or parties immediately upon transfer of such title from DASA to Datatron, then the difficulties of reversing the legal chain of events after the fact might well be a hopeless mess of procedural and jurisdictional problems of a very pragmatic kind. Such an eventuality is rendered potentially even more complex by the fact that it is not presently known where the equipment and leases constituting the res at issue are physically located or what physical disposition is planned to be made of them once title has formally passed from DASA to Datatron. The occurrence of any such problems can, at this point in time, be simply and effectively prevented if the court grants the interlocutory relief requested by plaintiffs, which is designed to do nothing more than maintain the status quo between the parties with respect to the res at issue until the court has had a reasonable opportunity to hear and determine the major underlying questions of law and fact presented by this

motion and by the verified complaint.

(c) The state of plaintiffs' efforts toward distribution of their proxy materials to the debenture holders is as follows:

(I) Preliminary proxy materials were first mailed to the SEC for review on March 9, 1972. Thereafter, revised and "red-lined" copies were mailed to the SEC on March 18, 1972 and March 20, 1972. A letter of comments dated March 23, 1972 was received from the SEC on March 28, 1972. Those written comments covered all revised materials mailed to the SEC, according to advice received by telephone on March 24, 1972 from Arthur Ralph, Esq., the SEC staff attorney in charge of this matter. Consequently, plaintiffs expect to have a revised, final form of their proxy materials (based upon consideration of SEC comments) ready for reproduction during the early part of the week beginning March 27, 1972. Such final materials will be reproduced as promptly as possible and delivered to the Trustee for mailing as soon as the reproduction efforts are completed. Arrangements have already been made for such reproduction to be done as expeditiously as possible.

(II) A draft of such proxy materials was delivered by messenger to the Trustee for review by it on March 21, 1972, and notice of plaintiffs' intent to have the Trustee mail such materials to the debenture holders, pursuant to Section 9.02(b) of the Indenture, was also delivered at that time. On March 23, 1972 counsel for the Trustee advised counsel for the plaintiffs

over the telephone that the Trustee had reviewed the materials submitted to and had (A) decided to mail them to the debenture holders upon receipt of the materials and payment of \$350 as the estimated cost of mailing and (B) decided not to avail itself of the procedures provided in the Indenture for refusal to mail where the Trustee is of the opinion that mailing of materials submitted "would be contrary to the best interests of the holders of the debentures." At that time, counsel for plaintiffs advised counsel for the Trustee that plaintiffs would definitely submit payment of \$350 and approximately 500 copies of the materials in final form for mailing to the Trustee as soon as the SEC's letter of comments had been received and considered and the final form of the proxy materials had been completed and reproduced. On March 24, 1972, counsel for the Trustee advised counsel for the plaintiffs that the Trustee had notified DASA of the Trustee's decision to mail to the debenture holders proxy solicitation materials submitted by the plaintiffs.

(III) On March 23, 1972, counsel for the plaintiffs notified counsel for the Trustee by telephone that plaintiffs were in the process of completing preparation of the papers necessary to commence this action and to make this motion. That notice included an explanation (A) that the Trustee would be named in the complaint and in the motion for a temporary restraining order and a temporary injunction and (B) that the interlocu-

tory relief requested would include a stay against amendment of the Indenture and sale of the subject computers and leases. The subject of the commencement of this action was further discussed in a similar telephone conversation between such counsel on March 24, 1972. Under date of March 23, 1972, counsel for plaintiffs sent a letter to counsel for the Trustee (receipt of which was acknowledged orally by the latter on March 24, 1972) stating, in part, "that papers are being drawn up as quickly as possible to commence litigation in federal court for, among other things, the purpose of preventing the execution of . . . [a] Supplemental Indenture containing a \$21.00 conversion price." That letter also included the following paragraph:

"Since negotiations between DASA Management and the Committee have failed, in the interest of fairness to all debenture holders we urge the Bank, in the event DASA secures the necessary 66 2/3% consent to its proposed second Supplemental Indenture before (1) the Committee has communicated with the debenture holders pursuant to Section 9.02 (b) of the Indenture and said holders have had a reasonable time to read and respond to such communication and (2) before a Court restrains DASA from executing its version of the Supplemental Indenture, to exercise the discretion it has, as Trustee, under Section 11.02(d) and refrain from executing the Supplemental Indenture should the Bank be requested, to do so by DASA."

(IV) Plaintiffs' efforts to complete the proxy materials and to complete the complaint in this action were delayed six days because the DASA solicitation letter dated March 9, 1972 was apparently not sent to Bradley R. Brewer, even though he has two separate accounts and, as confirmed by the Trustee, should have received two separate mailings of the

solicitation letter. The Trustee, in response to Mr. Brewer's request on March 17, 1972, did send copies of the solicitation materials to his office by messenger that same day, but no mailing has as yet been received by him. It was, therefore, not until March 17, 1972 that plaintiffs' attorneys could examine the solicitation materials and revise their proxy materials based upon said examination and complete the complaint herein by including allegations based upon the solicitation letter.

E. DERIVATIVE ACTION ALLEGATIONS

(9) Plaintiffs bring this action, in part, as a derivative action on behalf of DASA against the officers and directors of DASA named as defendants herein and against Arthur Andersen and Company, DASA's auditors, alleging, among other things, (I) that the defendant officers and directors (a) had prepared and distributed proxy materials for the DASA 1972 Annual Meeting of Stockholders, a 1971 Annual Report and a solicitation letter to DASA Debenture holders, all of which contained substantial legal defects of which said defendants were aware, having been notified of such defects by plaintiffs; (b) conducted a costly and legally defective and voidable 1972 DASA Annual Meeting on 2/29/72, despite notice of the legal defects thereof by plaintiffs both prior to and during such Annual Meeting; (c) refused to adjourn such Annual Meeting for a period of 60 days, as proposed and moved by plaintiffs thereat, for the purpose of providing DASA with time in which to reproxy and attempt to correct other legal defects in said meeting, with the result that an entirely new Annual Meeting must be held at a substantial cost that could have and should have been avoided; (d) conducted a costly consent solicitation effort directed to the Debenture holders by means of solicitation materials containing legal defects of which the defendant officers and directors were aware, having been notified of many such defects by plaintiffs, with the result that an entire new solicitation effort may be required and (II) that the defendant auditors breached a duty to DASA in failing to include in their "certification letter" for the DASA 1970 Annual Report "exception" to the inclusion on the balance sheet of an asset valued at \$1.5 million similar to the "exception" stated with respect to such asset in the 1971 Annual Report.

(10) The three members of the plaintiff Committee are now, and were at the time of all of the transactions herein complained of, holders of \$127,000 face amount of the Debentures.

(11) Plaintiff Simms C. Browning is now, and was at the time of the transactions herein complained of, the holder of \$50,000 face amount of the Debentures.

(12) Plaintiff Roy E. Brewer is now and was, at the time of the transactions herein complained of, the holder of 700 shares of DASA Common Stock and \$25,000 face amount of the Debentures.

(13) Plaintiffs fairly and adequately represent the interests of the Debenture holders similarly situated in enforcing the rights of DASA herein alleged.

(14) Plaintiff Roy E. Brewer fairly and adequately represents the interests of both the (i) holders of DASA Common Stock and (ii) such holders who are also Debenture holders.

(15) Plaintiffs have made diligent efforts since on or about 2/8/72 to alert defendant officers and directors of DASA to the actions herein complained of by them contrary to the interests of the Corporation and in violation of the fiduciary obligations of such defendants to the Corporation. Such efforts have been unsuccessful in persuading such defendants to correct or redress such wrongful actions by them.

(16) This action does not involve collusion engaged in for the purpose of conferring upon this Court jurisdiction over this action which it would not otherwise have.

F.

CLAIMS

CLAIM 1

Violations of Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 77n(a) and Rule 14a-9 of the Securities and Exchange Commission thereunder.

False and Misleading Statements in and Omission of Material Statements of Fact from the Proxy Materials.

(17) On or about January 24, 1972, DASA mailed to its shareholders of record as of January 14, 1972, by order of its Board of Directors (a) certain proxy materials (herein the "proxy materials"), consisting of (i) a Notice of Annual Meeting of Stockholders dated January 24, 1972, (herein the "notice"); (ii) a "Proxy Statement" (herein the "proxy statement"), also dated January 24, 1972, and signed by Richard A. Reichter, President; and (b) an Annual Report - 1971 (herein the "Annual Report") containing, inter alia, (i) a "President's Message" on Page 1 signed by Reichter as "President and Chief Executive Officer"; (ii) "Consolidated Balance Sheets" on pages 4 and 5; (iii) "Consolidated Statements of Loss" on page 6; (iv) "Consolidated Statements of Capital Stock, Capital in Excess of Par Value and Retained Earnings (Deficit)" on page 7; (v) "Consolidated Statements of Changes in Financial Position --- For the years ended October 31, 1971 and 1970" on page 8; (vi) "Auditors' Report" dated January 10, 1972, on page 13. (Items (b) (i) through (vi) above in this paragraph are sometimes referred to collectively herein as the "financial statements.") A copy of the proxy materials is attached hereto as Exhibit "B", and a copy of the Annual Report - 1971 is so attached as Exhibit "C."

(18) DASA was dissolved and its existence as a corporation was thus extinguished by action of the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts (No. 69869) on February 3, 1971, for failure to pay state excise

taxes and failure to file reports required by Massachusetts law. DASA was revived by action of the Secretary of State of Massachusetts on October 1, 1971. A copy of the official file record of said Secretary of State is attached hereto as Exhibit "D", and a copy of the official certification of said Secretary of State to such dissolution and revival is attached hereto as Exhibit "E."

(19) In connection with the statements set forth in the proxy materials, the defendants, in violation of SEC Rule 14a-9 under Section 14(a) of the Exchange Act and of said Section 14(a), omitted and failed to state material facts which, at the time and in the light of the circumstances under which such statements were made, were necessary in order to make such statements not false or misleading. Such omitted and unstated material facts included the following:

(a) DASA was dissolved on February 3, 1971, and was without legal existence until October 1, 1971, at which time such existence was revived;

(b) such dissolution was due to negligence and carelessness on the part of DASA's management;

(c) (upon information and belief) such dissolution was discovered not by DASA's management, but by its auditors;

(d) such dissolution constituted a breach by DASA of a covenant contained in Section 6.07 of the Indenture dated as of July 1, 1967, covering DASA's 6% Convertible Subordinated Debentures Due July 1, 1987 (the "Indenture" and the "Debentures") under which DASA was obligated to "preserve and maintain its corporate existence" and "to preserve and maintain ... all governmental permits and licenses required for the proper conduct of its business and affairs";

(e) if such dissolution had continued for a period of 60 days after written notice given to DASA by the Trustee under the Indenture, DASA would have committed a "default" as defined by Section 10.02 of the Indenture and the Trustee would have been authorized and perhaps obligated, under said Section 10.02, to declare the full principal amount of the Debentures to be due and payable by DASA immediately;

(f) if such default and declaration by the Trustee had taken place, DASA would, almost certainly, have been cast into bankruptcy or reorganization proceedings under the federal Bankruptcy Act and the equity interest in DASA would have been in serious danger of being completely extinguished;

(g) in order for the financial statements, contained in the 1971 Annual Report distributed in connection with the proxy materials to be legal under Massachusetts law, because of the inclusion in them of a qualified opinion by DASA's auditors, the financial statements would have to receive a discretionary approval from the Secretary of State of Massachusetts, and DASA's management had, on March 20, 1972, no indication from said Secretary of State or any other responsible official of the Commonwealth of Massachusetts as to whether or not such approval would be given to the financial statements as distributed to DASA's shareholders;

(h) (upon information and belief) DASA's management had not exercised due diligence or reasonable care in connection with said requirement of discretionary approval in that it had not, by March 20, 1972, made any attempt to obtain a ruling or opinion from any official of the Commonwealth of Massachusetts

with respect to whether or not such approval could be or would be granted for the financial statements as distributed to DASA's shareholders, nor had management obtained on that date an opinion from legal counsel with respect to the requirement of such approval or to whether or not it would be granted when sought;

(i) a statement in clear, accurate and reasonably comprehensible terms explaining (i) the nature, extent, immediacy and seriousness of DASA's need for additional working capital funds, (ii) the availability (or absence thereof) of sources outside the corporation from which such funds might be obtained on terms deemed acceptable or practicable by DASA's management or the opinion of management with respect to the availability of such funds and the terms thereof or the efforts, if any, of management to obtain such outside funds and the results, if any, of such efforts or the reasons why such efforts, if not made, were not made, (iii) the importance, if any, to DASA, in light of all pertinent circumstances, of the proposed acquisition of approximately one million dollars of such working capital through the sale of IBM 360 computer systems owned by the corporation, (iv) the alternatives, if any, realistically available to the corporation for the acquisition of such funds in the event that such sale should fail to take place, and (v) the probable consequences for the corporation if that sale should fail to take place. The materiality of such a statement is indicated by the fact that a solicitation letter (the "consent solicitation letter") dated March 9, 1972, and sent by DASA to its Debenture holders soliciting their consent to the proposed sale by DASA of computer assets contains, at different places in the letter, makes statements similar to those here alleged to have been unlawfully omitted from the proxy materials: (I) at page 15 is a statement nearly one page in length under the heading "Need for Working

Capital" showing, among other things, DASA's working capital position at the end of its last three completed fiscal years (1969, 1970 and 1971); (II) at page 18 is a statement nearly two pages in length under the heading "Alternative Arrangements to Approval of Amendments" stating, in part: "If DASA's financial position should deteriorate further and if alternative borrowing arrangements could not be made and if DASA is unable otherwise to obtain or generate necessary working capital, a liquidation or reorganization proceeding under the Federal Bankruptcy Act might be necessary."; and (III) at page 21 is a statement under the heading "Position of Debenture holders" which, in part, further explains the nature and seriousness of the corporation's need for working capital and the importance of the proposed sale of computers to Datatron.

(j) a clear and reasonably comprehensible statement of what was meant by the term "foreseeable future" included in the statement at page 7 of the Proxy Statement that DASA's "need for working capital would be satisfied for the foreseeable future if the sale of the computer systems ... is consummated", including a statement as to whether or not such "foreseeable future" would or would not include payments of interest to the Debenture holders on July 1, 1972 and January 1, 1973 (see paragraph (21) (b) below);

(k) a clear statement explaining (i) the existence of a possible conflict of interest on the part of each officer and director of DASA who owns either DASA Common Stock or an option, warrant or other interest (other than a Debenture) and who participates in the corporation's decision fixing the proposed new conversion price to be offered to the Debenture holders for the purpose of obtaining their consent to the proposed sale by DASA

of certain of its computer assets and (ii) the reason for the existence of such conflict of interest, i.e., that any substantial reduction of the debenture conversion price will necessarily result in a corresponding dilution of the equity ownership position of the present holders of DASA Common Stock by virtue of the conversion feature of the Debentures;

(l) a statement of the position taken by DASA's management with respect to the relationship between such possible conflict of interest and (i) the fixing of the proposed new conversion price and (ii) management's soliciation of proxies from Debenture holders for the purpose of obtaining their consent to the proposed sale of computer assets, i.e., whether management takes (I) the position that its sole duty is to the shareholders as the "owners" of the corporation and that, consequently, it owes no duty of fairness to the Debenture holders and, to the contrary, owes to the shareholders a duty to keep the new conversion price as high as possible regardless of whether such high price is fair and equitable to the Debenture holders or not (which is indicated by the proposed new price of \$32.00 which DASA incorporated in its first preliminary draft solicitation letter sent to the SEC in early February 1972 and which was not reduced until Mr. Browning and his associates began negotiations with DASA on behalf of themselves and the other Debenture holders) or (II) the position that it owes a fiduciary duty of fair and equitable treatment to the interests of both the shareholders and the Debenture holders in connection with fixing of the proposed new conversion price;

(m) if management takes position (II) above, a statement of (i) how the proposed new conversion price was arrived at; (ii) how the interests of both shareholders and debenture

holders were considered and incorporated in the relevant deliberations and calculations; (iii) whether or not an expert and disinterested opinion from outside the corporation was obtained as to the proper range of prices within which the new conversion price should properly fall; and (iv) which, if any, of the officers and directors owning common shares or an interest in such shares disqualified themselves from participation in the decision on fixing the proposed new conversion price.

(20) In connection with the statements set forth in the proxy materials, the defendants, in violation of SEC Rule 14a-9 and of Section 14(a) of the Exchange Act, made certain statements therein which are false and misleading with respect to certain material facts. Such false and misleading statements included the following:

(a) the statement at page 7 that the corporation's "need for working capital would be satisfied for the foreseeable future if the sale of the computer systems . . . is consummated", which (i) is so ambiguous, unclear and fundamentally devoid of meaning that it is at best deceptive and misleading and at worst a completely false statement and (ii) is in direct conflict with a statement made at page 3 of the consent solicitation letter dated March 9, 1972 to the holders of DASA's Debentures that:

"It should be emphasized that there can be no assurance that DASA will solve on a long term basis its sales and financial problems and, therefore, there can be no assurance, whether or not the sale of the Equipment and Leases is consummated, that DASA will be able to make timely interest and sinking fund payments on the Debentures in future years."

In that connection it should be noted that "future years" begin on January 1, 1973, at which time a payment of interest to the Debenture holders is due, and the term "long term basis" used in the preceding basis is, therefore, deceptive and misleading

in itself and has the effect of making that paragraph similarly deceptive and misleading;

(b) the statements made in the last five paragraphs (at pages 6 and 7) which purport to describe the proposed sale by DASA of certain computer systems, which contain (i) no heading to alert the reader to the contents thereof, (ii) no emphasis of any kind to indicate that the proposed transaction described therein was not a mere insignificant detail of corporate housekeeping but a matter of very great importance to the corporation without which it might well not be able to continue operations to the end of the present (1972) fiscal year (as stated in the solicitation letter of March 9, 1972), (iii) no earlier reference in the proxy materials to indicate their existence to the reader who might not read the materials all the way to the end without such earlier reference, (iv) no reference to the fact that DASA intended to propose to the Debenture holders in connection with the proposed sale a new Debenture conversion price (v) no reference to the fact that the lowering of that conversion price would have the effect of diluting the ownership interest of the present holders of DASA Common Stock, (vi) no reference to or explanation of why acceptance of such dilution would or would not be in the best interests of the shareholders and/or the corporation as a whole, and (vii) no opportunity in the proxy materials or in the proxy presented therewith for the solicited shareholders to approve or disapprove the proposed transaction--- even though it might have the effect of substantially altering the percentage of their equity ownership of the corporation.

CLAIM 2

Violations of Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 77n(a) and Rule 14a-3(b)(2) of the Securities and Exchange Commission thereunder.

False and Misleading Statements in and Omissions of Material Statements of Fact from the 1971 Annual Report.

(21) In connection with the statements set forth in the Annual Report, the defendants, in violation of SEC Rule 14a-3 and of Section 14(a) of the Exchange Act, omitted certain information necessary (i) to a fair presentation of DASA's financial condition as set forth in the Financial Statements considered as a whole in the light of other information contained in the Annual Report and (ii) to make the financial statements not misleading under the circumstances. Such omitted information included the following:

(a) The Annual Report and the financial statements therein contain an exception to or qualification of the certification opinion stated in the Auditor's Report (page 13) with respect to the inclusion in the Financial Statements of an intangible asset valued at \$1.5 million and called "Excess of Purchase Price Over Net Assets Acquired". Both the Annual Report and the Financial Statements fail to state (i) that, in order for those Statements to constitute the legal statement of assets and liabilities of the corporation under Massachusetts law, DASA is required by Section 109A of the Massachusetts Business Corporation Law to obtain from the Massachusetts Secretary of State discretionary approval which is required as a condition for filing of all statements of assets and liabilities of Massachusetts corporations as to which the corporation's auditors have given a qualified opinion; (ii) what the consequences to the corporation would be

if such discretionary approval were refused or made conditional upon certain changes in the financial statements; and (iii) what action DASA's management did or did not take with respect to obtaining prior approval or an opinion of legal counsel with respect to the requirements of that statute.

(b) The Annual Report states, in the President's Letter of Richard A. Reichter (page 1), that "during the past fiscal year, the financial position of our Company has been . . . significantly improved." That statement is false, inaccurate and misleading because (i) in fact the financial statements indicate (to an experienced securities analyst, but probably not to a nonexpert reader or shareholder) that the corporation's financial position had in fact substantially worsened or deteriorated during such fiscal year and (ii) no statements are made in that letter which qualify or explain that statement in such a way as to make it not misleading under the circumstances.

(c) The Annual Report fails to include any reference to the fact that DASA was dissolved on February 3, 1971 and revived on October 1, 1971, as described in paragraph (18) above.

ded its primary obligation as being to the Common shareholders and (ii) considered itself as being under no obligation or duty to consider the interests of the Debenture holders as a group so far as selecting the new conversion price was concerned. It is inconceivable that management could have given any thought to the interests of the Debenture holders when it selected \$32.00 as its first proposed new conversion price and included that figure in the draft of the solicitation letter which DASA sent to the SEC for review late in January or early in February.

(b) The solicitation letter does not contain a clear statement explaining (i) the existence of a possible conflict of interest on the part of each officer and director of DASA who owns either DASA Common Stock or an option, warrant or other interest (other than a Debenture) and who participated in the corporation's decision fixing the proposed new conversion price now being offered to the Debenture holders for the purpose of obtaining their consent to the proposed sale by DASA of certain of its computer assets and (ii) the reason for the existence of such conflict of interest, i.e., that any substantial reduction of the Debenture conversion price will necessarily result in a corresponding dilution of the equity ownership position of the present holders of DASA Common Stock by virtue of the conversion feature of the Debentures.

(c) The solicitation letter does not contain a statement of the position taken by DASA's management with respect to whether management takes (I) the position that its sole duty is to the shareholders as the "owners" of the corporation and that, consequently, it owes no duty of fairness to the Debenture holders and, to the contrary, owes to the shareholders a duty to keep the new conversion price as high as possible regardless of whether such high price is fair and equitable to the Debenture holders or not or (II) the position that it owes a fiduciary

CLAIM 3

Violations of Sections 14(a) of the Exchange Act, Rule 14a-9 and 14a-3(a) of the SEC thereunder, and Section 323 of the Trust Indenture Act of 1939 (15 U.S.C. Sec. 77 www(a)).

False and Misleading Statements in and Omission of Material Statements of Fact from the DASA Solicitation Letter Dated March 9, 1972.

(22) In connection with the statements set forth in the solicitation letter distributed by DASA management dated March 9, 1972 and in the accompanying form of "consent", the defendants, in violation of SEC Rules 14a-9 and 14a-3(a) under Section 14(a) of the Exchange Act, of said Section 14(a) and of Section 323 of the Trust Indenture Act of 1939 (the "Trust Indenture Act"), made certain false statements with respect to material facts and omitted to state certain material facts which, at the time and in the light of the circumstances under which such statements were made, were material and/or necessary in order to make such statements not false or misleading. Such false statements with respect to material facts and such omitted statements with respect to material facts include the following:

(a) Despite the fact that plaintiffs (1) notified DASA's management by telephone as early as 2/10/72 of the existence of a possible conflict of interest as described above on the part of virtually all of DASA's directors and its two principal officers with respect to fixing of the new conversion price to be offered to the Debenture holders, (2) described that problem in a written document delivered on 2/28/72 (one day before the Annual Meeting), and (3) explained it directly to the DASA Board of Directors on 2/29/72 immediately after the Annual Meeting, the solicitation letter nevertheless fails to contain any reference to the fact that, when it came to selecting a new Debenture conversion price to be offered to the Debenture holders, DASA management (i) regar-

duty of fair and equitable treatment to the interests of both the shareholders and the Debenture holders in connection with fixing of the proposed new conversion price.

(d) If management takes position (II) above, the solicitation letter fails to include a statement of (i) how the proposed new conversion price was arrived at; (ii) how the interests of both shareholders and Debenture holders were considered and incorporated in the relevant deliberations and calculations; (iii) whether or not an expert and disinterested opinion from outside the corporation was obtained as to the proper range of prices within which the new conversion price should properly fall; and (iv) which, if any, of the officers and directors owning common shares or an interest in such shares disqualified themselves from participation in the decision on fixing the proposed new conversion price.

(e) Despite the fact that a reasonable Debenture holder might assume that the trustee for the Debenture holders under the Indenture would actively represent the interests of such holders in negotiating with management over the proposed new conversion price, the solicitation letter does not inform the Debenture holders of the fact that the Trustee did not, in this situation, and has not in the past, taken any action on behalf of the Debenture holders with respect to changes in the conversion price or similar matters.

(f) The solicitation letter makes no reference to the existence of the Browning Committee or to its efforts on behalf of the Debenture holders as a group since the first full week in February. The omission of such reference is a further indication that DASA management does not consider itself to have any duty of fairness or openness to the Debenture holders as a group with

regard to the question of the adequacy and fairness of the proposed new conversion price and the manner in which that price was decided upon.

(g) The management "consent form" is seriously deceptive in that it gives the impression that a consent given on that form is not revocable, and the DASA solicitation letter does not inform the reader of the fact that he can revoke such consent until the last paragraph of the letter (on pages 34 and 35). Moreover there is no heading or underscoring or any other emphasis in the solicitation letter pointing out such revocability to the reader similar to the clear statement on page 1 of DASA's Notice of Annual Meeting (sent to shareholders) that "THE PROXY IS REVOCABLE...."

(h) The solicitation letter does not contain any of the following information:

(i) DASA was dissolved and its existence as a corporation was thus extinguished by action of the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts (No. 69869) on February 3, 1971, for failure to pay state excise taxes and failure to file reports required by Massachusetts law. DASA was revived by action of the Secretary of State of Massachusetts on October 1, 1971.

(ii) Such dissolution may have been due to negligence and carelessness on the part of DASA's management.

(iii) Such dissolution may have been discovered not by DASA's management, but by its auditors.

(iv) Such dissolution constituted a breach by DASA of a covenant contained in Section 6.07 of the Indenture dated as of July 1, 1967, covering DASA's 6% Convertible Subordinated Debentures Due July 1, 1987 (the "Indenture" and the "debentures") under which DASA was obligated to "preserve and maintain... all governmental

permits and licenses required for the proper conduct of its business and affairs".

(v) If such dissolution had continued for a period of 60 days after written notice given to DASA by the Trustee under the Indenture, DASA would have committed a "default" as defined by Section 10.02 of the Indenture and the Trustee would have been authorized and perhaps obligated under said Section 10.02, to declare the full principal amount of the Debentures to be due and payable by DASA immediately.

(vi) If such default and declaration by the Trustee had taken place, DASA would, almost certainly, have been cast into bankruptcy or reorganization proceedings under the federal Bankruptcy Act and the equity interest in DASA would have been in serious danger of being completely extinguished.

(i) The financial statements set forth in the solicitation letter (or attached thereto) may not be legal and proper under Massachusetts law for the following reason: in order to be legal under Massachusetts law, because of the inclusion therein of a qualified opinion by DASA's auditors, the financial statements contained in the solicitation letter and in the 1971 Annual Report and distributed to both debenture holders and shareholders in connection with the proxy materials, have to receive a discretionary approval from the Secretary of State of Massachusetts, and DASA's management had, as far as the Committee knows, on 3/20/72, no indication from said Secretary of State or any other responsible official of the Commonwealth of Massachusetts as to whether or not such approval will be given to those financial statements as thus distributed.

(j) DASA's management may have failed to exercise due diligence or reasonable care in connection with said requirement of discretionary approval in that it may not have made,

prior to the date of the Annual Meeting, any attempt to obtain a ruling or opinion from any official of the Commonwealth of Massachusetts with respect to whether or not such approval could be or would be granted for those financial statements.

(k) The solicitation letter fails to state, in clear language readily comprehensible to an unsophisticated reader that (I) if the requisite percentage of the Debenture holders consent to amendment of Section 6.05 of the Indenture, as requested by DASA management; and (II) if for any reason the Agreement with Datatron Corporation ("Datatron Agreement") is not consummated in whole under the terms thereof as described in the solicitation letter; then (III) the Debenture holders will have conferred carte blanche consent to DASA management to dispose of the Equipment and Leases (as defined in the solicitation letter) as they see fit, in their unrestricted and uncontrolled discretion. The solicitation letter thus fails to include a statement explaining that, if, for any reason the Datatron Agreement is not so consummated, then DASA management will be free of the restraint (presently contained in Section 6.05 of the Indenture, for the protection of the Debenture holders) against disposition of the Equipment and Leases, and will be free to dispose of such Equipment and Leases under terms less beneficial than the terms described in the present solicitation letter. In other words, DASA's management will be free to continue to hold such Equipment and Leases and to sell or otherwise dispose of them free from any restraint under the Indenture and free of any requirement to obtain further Debenture holder consent to a later and different proposed sale of those assets regardless of the terms of such later proposed transaction and regardless of the financial condition of DASA at such time.

(1) The solicitation letter does not state that, in connection with the proposed sales of computers, DASA's management has, in effect, (i) regarded itself as representing and protecting the interests of only the common shareholders; (ii) the interests of those shareholders are opposed to the interests of the Debenture holders on the question of how high (or low) the new Debenture conversion price should be, and (iii) consequently, DASA's management has taken a position clearly at arms'-length from the Debenture holders and has attempted from the beginning to propose as high a proposed new conversion price as possible without making it virtually impossible to obtain the necessary Debenture holders' consent. The solicitation letter in no way notifies the Debenture holders that there has been no attempt by management to offer a fair or equitable conversion price.

(m) The solicitation letter does not inform the Debenture holders that the Trustee under the Indenture (i) has not bargained at any time on behalf of the debenture holders; (ii) has expressed no opinion whatever on the fairness to the Debenture holders of the presently proposed new conversion price of \$21.00; and, in effect, has adopted an extremely limited concept of its duties to act affirmatively on behalf of the debenture holders in the absence of a "default" as defined in the Indenture.

(n) Those Debenture holders who are also holders of DASA Common Stock have now received both (i) the proxy materials for the Annual Meeting and accompanying 1971 Annual Report and (ii) the solicitation letter. Those Debenture holders may have been misled into believing that the solicitation letter and the information contained therein are merely a restatement or repetition of information presented in the earlier documents. In fact, there are many important differences between the two documents and the statements made by DASA in them, and the solicitation letter contains no indication that such differences

exist. In some respects the solicitation letter appears to be in direct conflict with statements in the proxy materials (compare par. 4 on page 3 of the solicitation letter with the last par. on page 7 of the Proxy Statement). In other respects, the solicitation contains important new information not previously presented (see Note C "Excess of Purchase Price Over Net Assets Acquired" on pages 7 and 8 of the solicitation letter, which has no counterpart in the Proxy Statement or 1971 Annual Report). The solicitation letter contains no reference to those facts.

(o) The last paragraph of Note A to the Consolidated Statements of Income (Loss) on page 5 of the solicitation letter is materially misleading in that it implies that the \$1,398,500 loss therein stated was non-recurring, not in the ordinary course of business, and was beyond the control of DASA's management. In order to understand that last paragraph of Note A even partially, it is necessary for the reader to make a cross-reference (not indicated in the text) to the discussion on page 12 under the heading "Change in Magicall Business." If such a cross-reference had been indicated by the defendants, it might have enabled a particularly diligent reader to understand that those two sections of the letter actually discuss the same subject. As the text presently stands and as it was distributed to the Debenture holders, a reasonable reader thereof could well read said last paragraph of Note A (p. 5) and the material under said caption (p. 12) as describing separate, and distinct situations. Such cross-reference, if it had been included, might also have advised the reader that DASA management failed to anticipate that:

"Such reinstituted sales efforts ... [would have to be] discontinued after six weeks because . . . [DASA was required] to pay commissions and incur other selling expenses, but did not result in any appreciable sales volume of Magicall units to Western since a substantial portion of the orders were filled from existing telephone company inventories." (p. 13)

In other words, DASA management rushed into Magicall sales efforts after settlement of the telephone strike ignorant, as the result of its own negligence, of the size of A. T. & T. inventories of Magicall units, and continued such ill-advised sales efforts for a six week period. In addition, the solicitation letter omits a statement indicating the amount of commissions and selling expenses (i.e., the portion of the loss) attributable to such ignorance of such A. T. & T. inventories on the part of DASA's management.

(p) The last paragraph on page 17 of the solicitation letter under the caption "Application of Proceeds" is materially misleading in that the term "computer systems, peripheral equipment and leases thereon" has the effect of creating confusion between (i) "Equipment and Leases (defined on page 1 of the solicitation letter) and (ii) the "approximately \$4,000,000 in tangible property comprised principally of data processing rental equipment and supplies and [other] property and equipment. . ." (referred to on page 18 under the caption "Alternative Arrangements to Approval of Amendments").

(q) The first full paragraph on page 22 of the solicitation letter is materially misleading in that it implies or suggests that if the Debenture holders do not consent to the requested amendment to the indenture, there will be a "forced liquidation" of DASA and the Debenture holders will receive nothing as the result thereof. That suggestion or inference appears to be directly contrary to the underlying facts, because, even if the Equipment and Leases were sold (under a "forced liquidation") at a price lower than that under the Datatron Agreement, the "approximately \$4,000,000 in tangible property . . ." (which is separate and distinct from the Equipment and Leases) is totally ignored in connection with the reference in the solicitation letter to such imaginary "forced liquidation".

(r) Although solicitation letter clearly states that sale of the Equipment and Leases will not insure timely payment of interest under the Debenture of 1/1/73 (see reference to "future years" on p. 3, the first of which is 1973), the thrust of the statements made in the solicitation letter is that consummation of the proposed sale will materially enhance the Corporation's working capital position (see page 15, under "Need For

Working Capital", expressed flatly and not as management's view; page 17, last paragraph, expressed as management's view; page 22, last paragraph, expressed as management's view); but nowhere is it made clear or stated how such material enhancement of DASA's working capital position will be accomplished, and, since substantially all proceeds of the proposed sale will go to creditors other than the Debenture holders (see "Application of Proceeds," page 17), sale of the Equipment and Leases may well result in elimination over a period of months of all of DASA's tangible assets as to which the Debenture holders (as opposed to senior indebtedness) would have a preferred position in the event of liquidation or reorganization of the Corporation. (s) The solicitation letter does not inform the reader of the fact (stated by DASA management to the plaintiffs) that there is a deadline or date (which the plaintiffs believe to be April 30, 1972) after which the Datatron sale transaction cannot be consummated as of right by DASA. If the sale is not completed by such date and if Datatron is unwilling to grant an extension of time, then Datatron will be under no obligation to complete the transaction on the terms described in the solicitation letter.

(t) The solicitation letter does not contain, as required by Rule 14a-3(a), as it refers to Schedule 14A, Item 11(a) (v), a statement of the following information: "in the case of options [to purchase securities], the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the issuer".

(u) The solicitation letter does not disclose that (i) DASA management is giving or has given serious consideration to the possibility of making, at some point in the near or foreseeable future, another proposed reduction in the conversion price available only to Debenture holders who would agree to elect, as a condition to receiving such reduced conversion price, to make a simultaneous conversion of their Debentures into Common Stock, thereby forfeiting their right to receive interest payments and (ii) the existence of such a possible future course of action by DASA is one of the reasons why DASA is unwilling at this time to reduce the proposed new conversion price below \$21.00.

CLAIM 4

Violation by the Trustee of Fiduciary Obligations
under the Indenture and under the Trust Indenture
Act.

(23) Under date of 2/16/72, counsel for the Trustee advised plaintiffs that the Trustee "has not attempted to 'bargain' with DASA as to any proposed change in the conversion price" of the Debentures. Upon information and belief, the Trustee has not taken any affirmative action whatever (a) to protect the interests of the beneficiaries of its fiduciary obligations under the Indenture and the Trust Indenture Act, the Debenture holders, or (b) to advise the Debenture holders of their interests and/or threats against or dangers to those interests presented by the actions of DASA with respect (i) to the amendments proposed by DASA to the Indenture and (ii) to the proposed sale by DASA of the Equipment and Leases. Such failures to take affirmative action on behalf of the Debenture holders constituted a violation or violations by the Trustee of its fiduciary obligations to the Debenture holders under the Indenture and under the Trust Indenture Act. As the result of such failures to act, and among other things, the Debenture holders have not been advised in timely fashion of the opinion of the Trustee as to (A) whether or not the proposal submitted by DASA is or is not in the best interests of the Debenture holders as a group or (B) whether or not DASA management has violated any fiduciary obligations on its part to the Debenture holders or (C) whether or not the new conversion price of \$21.00 proposed by DASA to the Debenture holders is a fair and adequate consideration for the consent DASA has requested from the Debenture holders. A reasonable Debenture holder might well assume that in a situation, such as that presented in this action, where DASA management is proposing a new Debenture

conversion price in exchange for the granting of consent by the Debenture holders to certain corporate action which may or may not be in the best interests of the Debenture holders as a class (or in the best interests of the Debenture holders to the extent that such interests may conflict with the interests of the holders of DASA's presently outstanding shares of Common Stock), the Trustee has a duty to take and has in fact taken such affirmative action as may reasonably be required in the circumstances to protect the interests of the debenture holders or, in the absence of affirmative action in the nature of bargaining, at least to advise the Debenture holders of any dangers for them or threats against their best interests presented by the proposed action on the part of corporate management.

(24) Such failures to act in violation of such fiduciary obligations have caused and are continuing to cause substantial injury to the rights and interests of plaintiffs and of the Debenture holders as a class.

(25) It would be a further violation of the Trustee's fiduciary obligations under the Indenture and Trust Indenture Act, if the Trustee were to execute the Second Supplemental Indenture before (a) this Court rules on whether the Trustee can validly execute same and (b) the Committee has communicated with the Debenture holders, pursuant to Section 9.02(b) the Indenture and said holders have had a reasonable time to read and respond to such communication.

CLAIM 5

Violations of Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 77n(a) and Rule 14a-3(b)(2) of the Securities and Exchange Commission thereunder.

Omission of Material Statements of Fact from the 1970 and 1971 Annual Reports of DASA.

(26) Upon information and belief, on or about January 1971, DASA mailed to its shareholders, by order of its Board of Directors, certain proxy materials, including, inter alia, an Annual Report - 1970 in connection with its Annual Meeting of Stockholders in 1971. Defendant Arthur Andersen and Co. (the "Auditors") state, in substance, in their opinion letter, dated January 7, 1971 in the Annual Report - 1970, Auditors' Report Section, that the consolidated financial statements in said Annual Report - 1970 present fairly the consolidated financial position of DASA and subsidiaries as of October 31, 1970, and the results of their operations and the changes in their financial position for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. The Auditors omitted a material fact in that no exception to said opinion was made with respect to \$1,500,000 of assets referred to in the Annual Report - 1970 as "Excess of Purchase Price Over Net Assets Acquired."

(27) The Auditors' Report, dated January 10, 1972 contained in DASA's Annual Report - 1971 see para. (21)(a) above, and Exhibit "C," p. 13) contains an exception to its opinion approving the consolidated financial statements of DASA and subsidiaries with respect to the fiscal years ended October 31, 1971 and 1970 with respect to said same \$1,500,000 of assets but omits the material fact that no exception to said assets was stated in its opinion in the previous year's Annual Report.

(28) Upon information and belief, the Auditors knew that its opinions, set forth in the 1970 and 1971 Annual Reports, would be sent with the proxy materials to shareholders in the years 1971 and 1972 respectively.

(29) Said Auditors breached its duty of due care to DASA in not stating said exception in its Auditors Report, set forth in the Annual Report - 1970 and in not including, in its Auditors Report, set forth in the Annual Report - 1971, a statement as to why it did not take said exception in the previous year's Annual Report.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

(I) Preliminary Injunction. Ordering the defendants DASA and the Bank, their agents, servants, employees, and attorneys and all persons in active concert and/or participation with them to refrain, pending final determination of this action, from:

- (a) selling all or any part of the computer systems, peripheral equipment (the "Equipment") and leases thereon (the "Leases") presently owned by DASA and presently covered by a sales agreement between DASA and Datatron Corporation;
- (b) amending Section 6.05 of the Indenture between DASA and the Bank of New York (the "Bank"), as Trustee, covering DASA's 6% Convertible Subordinated Debentures Due July 1, 1987;
- (c) amending Article IV of the Indenture so that the conversion price of the Debentures is reduced from \$42.42 to \$21.00; and
- (d) counting as a valid "consent" to sale of the Equipment and Leases or amendment of the Indenture, any form of consent submitted by any Debenture holder to DASA or the Bank unless and until expressly authorized to do so by order of this Court.

(II) Permanent Injunction. Ordering the defendants DASA and the Bank permanently to refrain from:

- (a) selling all or part of the Equipment and Leases, except pursuant to an order of this Court expressly authorizing such sale;
- (b) amending Section 6.05 or Article IV of the Indenture, except pursuant to an order of this Court expressly authorizing such action; and

D. Request for Interlocutory Relief

7. Denies each and every allegation contained in paragraph "(7)" of the Complaint, except refers to the Complaint for the contents thereof.

8. Denies each and every allegation contained in subparagraphs (a) and (b) of paragraph "(8)" of the Complaint, alleges that said allegations have been rendered moot by the decision of this Court (Motley, J.) dated May 8, 1972, denying plaintiffs' motion for a preliminary injunction, a copy of which is annexed hereto and made a part hereof, and denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in subparagraph "(c)" of paragraph "(8)" of the Complaint.

E. Derivative Action Allegations

9. Denies each and every allegation contained in paragraph "(9)" of the Complaint, except refers to the Complaint for the contents thereof.

10. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "(10)", "(11)" and "(12)" of the Complaint, except admits that now and at the time of all of the transactions alleged in the Complaint the three persons named as members of the Committee were and presently are the registered owners of an aggregate of \$127,000 principal amount of the Debentures, that plaintiff Simms C. Browning was and presently is the registered owner of \$50,000 principal amount of the Debentures, and that plaintiff Roy E. Brewer was and presently is the registered owner of \$25,000 principal amount of the Debentures and 700 shares of DASA common stock.

11. Denies each and every allegation contained in paragraphs "(13)", "(14)", and "(15)" of the Complaint.

12. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "(16)" of the Complaint.

Claim 1

13. Answering paragraph "(17)" of the Complaint, admits that on or about January 24, 1972 DASA mailed to its shareholders the proxy materials and annual report annexed to the Complaint as Exhibits "B" and "C", to which documents reference is made for the contents thereof.

14. Denies each and every allegation contained in paragraph "(18)" of the Complaint, except admits that by reason of an error made in the Office of the Secretary of State of the Commonwealth of Massachusetts, the records of said Office indicated that DASA had been dissolved, which error was corrected upon discovery thereof.

15. Denies each and every allegation contained in paragraphs "(19)" and "(20)" of the Complaint.

Claim 2

16. Denies each and every allegation contained in paragraph "(21)" of the Complaint.

Claim 3

17. Denies each and every allegation contained in paragraph "(22)" of the Complaint.

Claim 4

18. Denies each and every allegation contained in paragraph "(23)" of the Complaint, except denies that it has knowledge or information sufficient to form a belief as to

the truth of the allegations contained in the first two sentences of said paragraph "(23)".

19. Denies each and every allegation contained in paragraphs "(24)" and "(25)" of the Complaint.

Claim 5

20. Denies each and every allegation contained in paragraphs "(26)" and "(27)" of the Complaint, except admits that in or about January, 1971, DASA mailed to its shareholders proxy materials and an annual report referred to therein, to which documents reference is made for the contents thereof.

21. Denies each and every allegation contained in paragraph "(29)" of the Complaint.

WHEREFORE, defendant DASA Corporation demands judgment dismissing the First Amended Complaint and each purported claim contained therein, together with such other and further relief as to the Court may seem just and proper, including costs of this action.

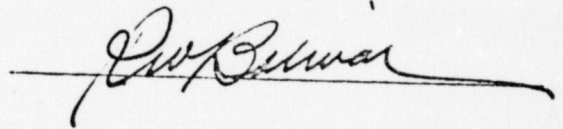
JACOBS PERSINGER & PARKER

By Richard B. Persinger
(A Member of the Firm)
Attorneys for Defendant
DASA Corporation
Office and P.O. Address:
70 Pine Street
New York, New York 10005
Tel. No. (212) 344-1866

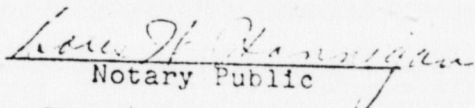
VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF ESSEX) ss.:

Ronald W. Bolivar , being duly sworn, deposes and says that he is an Executive Vice of DASA Corporation, one of the defendants herein; that he has read the foregoing Verified Answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.



Sworn to before me this
19th day of May, 1972.


Notary Public

DORIS W. HANDMAN, Notary Public
My commission expires 12/31/73

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.

:

:

:

:

:

:

Civil Action

72 CIV. 1332

T.P.G.

NOTICE OF MOTION

-----x
Moving Party:

Return Date, Time and Place
of Hearing:

Plaintiffs

Thursday, March 8, 1973

10:00 a.m.

Chambers of the Honorable

Charles P. Griesa, D.J.

United States Courthouse

Foley Square

New York, N.Y. 10007

Or such other date, time or
place as the Court may direct.

Relief Requested:

(A) An order pursuant to Rule
56(a) and (d), F.R.C.P.,
granting partial summary
judgment to the plaintiffs
as to liability on Claim 1
and Claim 2 set forth in
the complaint, or

(B) Appropriate proceedings
pursuant to Rule 56(d),
F.R.C.P.

Supporting Papers:

Memorandum of Law.

Dated: New York, N.Y.
February 21, 1973

BREWER & SOEIRO
Attorneys for Plaintiffs

By Bradley R. Brewer
Bradley R. Brewer
A Member of the Firm
292 Madison Avenue
New York, N.Y.
(212) 679-8091

TO:

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Attorneys for Defendant
DASA Corporation
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New York, N.Y. 10005

SULLIVAN & CROMWELL
Attorneys for Defendant
The Bank of New York
Office and P.O. Address
48 Wall Street
New York, N.Y. 10005

BREED, ABBOTT & MORGAN
Attorneys for Defendant
Arthur Andersen & Co.
One Chase Manhattan Plaza
New York, N.Y. 10005

Hon. THOMAS P. GRIESA
District Judge
U.S. District Court
Southern District of New York
Chambers
U.S. Courthouse
Foley Square
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BROWNING CORPORATION HOLDERS'
COMMITTEE, et al.,

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.

72 Civ. 1332 TPG

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of T. Michael Bayda, sworn to the 19th day of March, 1973, and upon the pleadings and prior proceedings heretofore had herein, the undersigned will move this Court, at the United States Court House, Foley Square, New York, New York, on the 29th day of March, 1973, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for an order, pursuant to Rule 56, F R Civ P, granting DASA summary judgment in respect of Claims 1 and 2 alleged in the First Amended Complaint on the ground that there is no genuine issue as to any material fact and that DASA is entitled to judgment as a matter of law, and for such other and further relief as to the Court may seem just and proper, together with the costs of this motion.

Dated: New York, New York
March 19, 1973

Yours, etc.

JACQUES PERSINGER & PARKER

By _____
A Member of the Firm
Attorneys for Defendant
DASA Corporation
Office and P.O. Address
70 Line Street
New York, New York 10005

TO:

BREWER & SOCIRO
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Office and P.O. Address
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SULLIVAN & CROMWELL
Attorneys for Defendant
The Bank of New York
Office and P.O. Address
48 Wall Street
New York, New York 10005

BREED, ABBOTT & MORGAN
Attorneys for Defendant
Arthur Andersen & Co.
Office and P.O. Address
One Chase Manhattan Plaza
New York, New York 10005

Statement Pursuant to Rule 9(g)
of the General Rules of the
United States District Court for
the Southern District of New York

Defendant DASA Corporation ("DASA") contends that as to the following material facts there is no genuine issue to be tried:

1. On February 29, 1972, DASA held an annual meeting of stockholders at the Rolling Green Motor Inn, Lowell Street, Andover, Massachusetts (the "1972 Annual Meeting").
2. In connection with the 1972 Annual Meeting, DASA mailed to its stockholders a Notice of Annual Meeting of Stockholders and a Proxy Statement, both dated January 24, 1972 (the "1972 Proxy Materials") [Exhibit D submitted herewith].
3. DASA also mailed to its stockholders its 1971 Annual Report (the "1971 Report") [Exhibit E submitted herewith] which included DASA's certified financial statements for the fiscal year ended October 31, 1971.
4. The only business transacted at the 1972 Annual Meeting, and the only matters in respect of which stockholder consideration and action was required, related to (i) fixing the number of directors at seven and electing seven directors to serve on DASA's Board of Directors until the next annual meeting of stockholders and (ii) ratifying the selection of Arthur Andersen & Co., independent public accountants, as DASA's auditors for the fiscal year ending October 31, 1972.

See

5. On February 27, 1973, DASA held an annual meeting of stockholders at the Rolling Green Motor Inn, Lowell Street, Andover, Massachusetts (the "1973 Annual Meeting").

See

6. In connection with the 1973 Annual Meeting, DASA mailed to its stockholders a Notice of Annual Meeting of Stockholders and a Proxy Statement, both dated January 19, 1973 (the "1973 Proxy Materials") [Exhibit F submitted herewith].

See

7. DASA also mailed to its stockholders its 1972 Annual Report (the "1972 Report") [Exhibit G submitted herewith] which included DASA's certified financial statements for the fiscal year ended October 31, 1972.

See

8. The only business transacted at the 1973 Annual Meeting, and the only matters in respect of which stockholder consideration and action was required, related to (i) fixing the number of directors at seven and electing seven directors to serve on DASA's Board of Directors until the next annual meeting of stockholders and (ii) ratifying the selection of Arthur Andersen & Co., independent public accountants, as DASA's auditors for the fiscal year ending October 31, 1973.

Proxy Statement

9. The 1972 Proxy Materials and the 1973 Proxy Materials were submitted to and reviewed and cleared by the Securities and Exchange Commission before being mailed to DASA's stockholders.

False

10. The 1972 Proxy Materials and the 1973 Proxy Materials complied with the requirements of Section 14 of the Securities and Exchange Act of 1934 and Regulation 14A pursuant thereto.

True

11. The 1972 Proxy Materials (pp. 6-7) contained a five paragraph description of the terms of a sales agreement between DASA and two of its wholly-owned subsidiaries with Datatron Corporation for the sale of all of the IBM System/360 Series Computer Systems owned by DASA and said subsidiaries together with the leases thereon (having a net book value of \$2,308,000 on January 10, 1972, representing approximately 19% of the book value of DASA's total assets), for a cash consideration of \$2,350,000.

False

12. The 1971 Annual Report was not incorporated in and was not a part of the 1972 Proxy Materials.

True

13. The 1971 Annual Report contained (p. 1) a nine paragraph "President's Message" which, after first stating that "[t]he results of DASA's operations for the fiscal year ended October 31, 1971 were both positive and disappointing" and describing in detail the positive and disappointing results of operations, stated in the seventh paragraph:

"Even though we were required to face the above mentioned difficulties during the past fiscal year, the financial position of our Company has been, none the less, significantly improved. During 1971, Corporate indebtedness was reduced by more than 5.6 million dollars. We anticipate continuing improvement in our financial posture during Fiscal '72. To this end we have recently completed negotiations

and have signed an agreement to sell the remainder of our computer portfolio. The consummation of this arrangement, which is subject to certain terms and conditions, (see footnote 12 to the financial statements) will significantly improve the Company's working capital position."

10/1/71
14. During DASA's fiscal year ended October 31, 1971 DASA's indebtedness was reduced by \$5.6 million.

10/1/71
15. DASA's certified financial statements for the fiscal year ended October 31, 1971 (Exhibit E, p. 5) show that -

A. On October 31, 1970, the sum of DASA's total current liabilities (\$8,523,554) and long-term debt (\$9,306,646) was \$17,830,200; and

B. On October 31, 1971, the sum of DASA's total current liabilities (\$5,037,545) and long-term debt (\$7,156,465) was \$12,194,010.

10/1/71
16. On or about June 1, 1972, DASA sold the computer equipment and leases and applied most of the proceeds to the elimination of corporate debt.

10/1/71
17. During the fiscal year ended October 31, 1972 DASA's working capital was converted from a deficit to a positive ratio of about three-to-one.

10/1/71
18. DASA's certified financial statements for the fiscal year ended October 31, 1972 (Exhibit G, pp. 6-7) show that -

A. On October 31, 1971 DASA had total current assets of \$4,302,031 and total current liabilities of \$5,037,545 for a net working capital deficit of \$735,514.

B. On October 31, 1972 DASA had current assets of \$3,856,031 and total current liabilities of \$1,316,864 for a net working capital surplus of \$2,539,216.

19. DASA's certified financial statements for the fiscal year ended October 31, 1972 (Exhibit G, p. 8) also show that DASA's operations have become profitable.

20. Neither DASA's stockholders nor debenture holders have suffered any damage as a result of any of the transactions complained of in the complaint, nor have any such damages been alleged.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.

- - - - -x

72 Civ. 1332
T.P.G.

AFFIDAVIT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

I. MICHAEL BAYDA, being duly sworn, deposes and
says:

1. I am an attorney and an associate of Jacobs
Persinger & Parker, attorneys for defendant DASA Corporation
("DASA"), and am familiar with the pleadings and prior pro-
ceedings heretofore had herein.

2. This affidavit is respectfully submitted:

(a) in support of DASA's cross-motion
for an order, pursuant to Rule 56, F R Civ P,
granting DASA summary judgment in respect
of Claims 1 and 2 alleged in the First
Amended Complaint, on the ground that there is
no genuine issue as to any material fact re-
lating to said Claims and that DASA is entitled
to judgment as a matter of law; and

(b) in opposition to the totally meritless
motion of unidentified plaintiffs for an order,
pursuant to Rule 56, F R Civ P, granting said plain-
tiffs partial summary judgment in respect of said
Claims--a motion based on nothing more than the con-
clusory and unsubstantiated allegations contained in

plaintiffs' First Amended Complaint, which, as will hereinafter appear, are demonstrably false, and which requests relief which is purposeless, wasteful and detrimental to the interests of all concerned, including DASA, its stockholders and its Debenture Holders.

3. Claims 1 and 2 erroneously allege that DASA violated Section 14(a) of the Securities and Exchange Act of 1934 and Rule 14a-9 thereunder by statements made in or omissions from the proxy statement dated January 24, 1972 (the "1972 Proxy Statement") issued in connection with DASA's annual meeting of stockholders held February 29, 1972 and DASA's 1971 Annual Report (the "1971 Annual Report").

4. As will hereinafter appear, not only are plaintiffs' assertions that the 1972 Proxy Statement and the 1971 Annual Report contain false, misleading or deceptive statements or omissions refuted by uncontradicted evidence, but, additionally, the allegations of Claims 1 and 2 have been rendered moot by the holding of another annual meeting of DASA's stockholders on February 27, 1973, which was virtually a repeat of the February 29, 1972 meeting. Thus, it is respectfully submitted that the resolicitation of proxies for the 1972 meeting which plaintiffs now demand--after the 1973 meeting, the propriety of which has not been questioned, has been held--can serve no valid purpose whatsoever.

Background

5. Plaintiffs, including the so-called Browning Debenture Holders' Committee which admittedly owns no securities of DASA and accordingly has no standing to sue, commenced this action by motion for a preliminary injunction brought on by an order to show cause signed March 30, 1972.

6. In summary, plaintiffs' First Amended Complaint sought:

(a) preliminary and permanently to enjoin defendants from soliciting and counting consents of the holders (the "Debenture Holders") of DASA's 6% Convertible Subordinated Debentures due July 1, 1987 (the "Debentures") approving two amendments to the Indenture dated as of July 1, 1967, as supplemented, between DASA and The Bank of New York (the "Bank"), as Trustee (the "Indenture"), providing for:

(i) reduction of the Debenture conversion price from \$42.42 to \$21.00, and

(ii) amendment of Section 6.05 to allow DASA to sell, at any one time or from time to time, all or part of the computer systems, peripheral equipment (the "Equipment") and leases thereon (the "Leases") owned by DASA;

(b) an order declaring DASA's March 9, 1972 solicitation letter to the Debenture Holders (the "Solicitation Letter") void and requiring DASA to distribute a revised Solicitation Letter; and

(c) an order declaring DASA's February 29, 1972 annual meeting of stockholders void and requiring DASA to conduct a new meeting and to distribute new proxy materials in connection therewith.

7. Plaintiffs sue individually, and, additionally, purport to sue representatively and derivatively, and name

as defendants, DASA, certain present and former officers and directors of DASA, the Bank, and DASA's auditors, Arthur Andersen & Co., although, upon information and belief, only DASA, the Bank and Arthur Andersen & Co. have been served.

8. By Memorandum Opinion and Order filed May 8, 1972 (the "Order") [Exhibit A submitted herewith], this Court (Motley, J.) denied plaintiffs' motion for an order preliminarily enjoining the counting of Debenture Holders' consents to the amendment of the Indenture and stated (p.7) that "DASA is free to amend the indenture and consummate the sale...." In so doing, the Court concluded (p.5) that "many [of the items allegedly omitted from the Solicitation Letter] are more supposition and conclusion than fact, and that others are irrelevant, and hence immaterial, to the choice before the debenture holders."

9. In accordance with the Order, I am informed that a Second Supplemental Indenture was executed on May 15, 1972 and the Equipment and Leases were sold on June 1, 1972.

10. On May 22, 1972 plaintiffs noticed an appeal from the Order to the United States Court of Appeals for the Second Circuit. On August 16, 1972, DASA moved to dismiss plaintiffs' appeal as moot and, by order dated September 12, 1972 (Exhibit B submitted herewith), the Court of Appeals granted DASA's motion and dismissed the appeal. Upon the oral argument of DASA's motion on August 29, 1972, I am informed that Bradley R. Brewer, Esq., plaintiffs' attorney, declined the Court's offer to direct the District Court to set this action down for an immediate trial, asserting that extensive discovery was required prior to trial.

11. By order to show cause dated May 19, 1972, plaintiffs brought on a motion for a determination, pursuant to Rule 23(c)(1) and (2), F R Civ P, and Rule 11A of the Civil Rules of this Court, whether or not this action is to be maintained as a class action and, if so, the membership of the class. After extensive briefing of the issues raised by plaintiffs' motion, a lengthy hearing on October 24, 1972, and a pre-trial conference on January 15, 1973, this Court (Griesa, J.) by endorsement dated January 15, 1973 (Exhibit C submitted herewith), deferred final determination of the motion until further discovery had been completed and further pre-trial hearings had been held to narrow and eliminate issues.

12. Although no discovery was thereafter even initiated, much less completed, on February 21, 1973, plaintiffs moved this Court for partial summary judgment in respect of Claims 1 and 2. In fact, although this action has been pending for nearly one year, no depositions have been noticed and practically no other discovery has been sought by plaintiffs. Plaintiffs served interrogatories upon DASA which were answered in writing or by documentary production by December 1, 1972. Plaintiffs' attorney briefly reviewed the proffered documents on November 23, 1972 and January 4, 1973--and, to my knowledge, that has been the full extent of plaintiffs' formal discovery since the commencement of this action on March 30, 1972. Now plaintiffs who refused an immediate trial and who have made virtually no attempt to conduct discovery, move for summary judgment on the basis of the unsubstantiated conclusory allegations of the complaint and demand the totally useless and wasteful resolicitation of proxies for the 1972 annual meeting after the 1973 annual meeting has been held.

the Annual Report was not part of DASA's proxy soliciting

Claims 1 and 2 relating to DASA's 1972 annual meeting have been rendered moot by the holding of DASA's 1973 annual meeting.

13. Claims 1 and 2 in the First Amended Complaint relate solely to (i) the 1972 Proxy Statement (Exhibit D submitted herewith) and (ii) the 1971 Annual Report (Exhibit E submitted herewith). The only business transacted at the February 29, 1972 annual meeting of stockholders was the election of seven directors and the ratification of the selection of Arthur Andersen & Co., independent public accountants, as DASA's auditors for the fiscal year ending October 31, 1972.

14. On February 27, 1973, DASA held another annual meeting of stockholders and again elected seven directors and ratified the selection of Arthur Andersen & Co. as DASA's auditors for the fiscal year ending October 31, 1973. Copies of the notice of annual meeting and proxy statement issued in connection with DASA's February 27, 1973 meeting of stockholders and DASA's 1972 Annual Report (the "1972 Annual Report") are submitted herewith as Exhibits F and G.

15. It is respectfully submitted that the issues raised by plaintiffs in respect of the 1972 Proxy Statement and 1971 Annual Report, aside from being completely un-meritorious, have been rendered moot by the holding of DASA's 1973 annual meeting for the purposes of transacting precisely the same business as was transacted at the 1972 annual meeting.

16. It is respectfully further submitted that the resolicitation of proxies for the 1972 annual meeting which plaintiffs now demand would not--and could not--serve any useful purpose nor benefit anyone concerned and would put DASA to substantial expense without any resultant benefit to DASA, its stockholders, plaintiffs or the persons plaintiffs purport to represent.

Plaintiffs' assertions that the 1972 Proxy Statement contains false, deceptive or misleading statements or omissions are demonstrably untrue.

17. At the February 29, 1972 annual meeting of DASA's stockholders the number of directors was fixed at seven and seven directors were elected to serve on the Board of Directors until the next annual meeting of stockholders, and the selection of Arthur Andersen & Co. as DASA's auditors for the fiscal year ending October 31, 1972 was ratified. No other business came before the meeting. The stockholders were neither called upon to consider or act upon, nor was their authorization or approval required in respect of, any other matters.

18. Stockholder consideration and action as to the amendment of the Indenture and sale of the Equipment and Leases was not required by any statute or regulation. Although plaintiffs assert that DASA's stockholders should have been given an opportunity to approve or disapprove the proposed sale (Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment [hereinafter "Pl. Mem."] p.20), no authority, statutory or otherwise, is presented in support of that assertion.

19. Based upon the erroneous and unsupported premise that the stockholders should have been given an opportunity to approve or disapprove the sale of the Equipment and Leases, plaintiffs have proceeded to fabricate a demonstrably erroneous critique of the 1972 Proxy Statement.

20. The 1972 Proxy Statement, which was submitted to and reviewed and cleared by, the Securities and Exchange Commission before being sent to DASA's stockholders, conforms in all respects to the requirements of Section 14 of the Securities Exchange Act of 1934 and Regulation 14A promulgated thereunder when judged, as it properly should be, in light of the matters being presented to the stockholders for consideration and action (i.e. election of directors and ratification of the selection of auditors).

21. The absurdity of plaintiffs' misguided attempt (a) to judge the 1972 Proxy Statement as if stockholder approval of the sale of the Equipment and Leases was required by law and (b) to compare the 1972 Proxy Statement to the Solicitation Letter to Debenture Holders (Exhibit H submitted herewith) whose consent to the sale was required by the terms of the Indenture, undoubtedly will not escape the Court's attention. Moreover, as will hereinafter appear, each and every criticism by plaintiffs of the 1972 Proxy Statement and 1971 Annual Report are proved to be erroneous by those documents themselves and DASA's certified financial statements for its fiscal year ended October 31, 1972. Plaintiffs' criticisms are hereinafter discussed.

22. Although not required by any statute or regulation, for the information of the stockholders, the 1972 Proxy Statement contained five descriptive paragraphs relating to the sale of the Equipment and Leases. See Ex. D, pp. 6-7.

23. Plaintiffs contend that the description of the sale of the Equipment and Leases should have appeared with headings at an earlier place in the 1972 Proxy Statement. (Pl. Mem. p.19) Thus, plaintiffs would apparently reverse the priority given to the disclosure required by the proxy rules in connection with the matters to be acted upon at the February 29, 1972 meeting and replace it with an exhaustive presentation of facts having nothing whatsoever to do with the business to be conducted at the meeting. It is respectfully submitted that viewed in the context of the matters to be considered by the stockholders on February 29, 1972, the description of the proposed sale was properly placed and sufficiently, responsibly and reasonably presented in the 1972 Proxy Statement, plaintiffs' editorial comments notwithstanding.

24. Plaintiffs also allege that the statement appearing in the last paragraph of the description of the proposed sale that the "need for working capital would be satisfied for the foreseeable future if the sale of the computer systems ... is consummated" is either completely false or purposely ambiguous. (Pl. Mem. p. 19) This is demonstrably untrue. Plaintiffs have presented no evidence that DASA had after the sale or now has or will have any working capital problems and thus have no basis to challenge the statement. On the contrary, as appears in DASA's 1972 Annual Report (Ex. G), during its fiscal year ended October 31, 1972, DASA's working capital situation improved dramatically--
from a negative ratio to a positive ratio of almost three-to-
one. Thus, DASA's certified financial statements contained in the 1972 Annual Report show that -

(a) On October 31, 1971 DASA had total current assets of \$4,392,031 and total current liabilities of \$5,037,545 for a net working capital deficit of \$725,514, (Ex. G, pp. 6-7); and

(b) On October 31, 1972 DASA had total current assets of \$3,896,081 and total current liabilities of \$1,316,965 for a net working capital surplus of \$2,539,216 (Ex. G, pp. 6-7).

Moreover, having eliminated substantial amounts of corporate indebtedness, and the consequent interest charges, with the proceeds of the sale of the Equipment and Leases, the certified financial statements also show that DASA's operations have become profitable (Ex. G, p.8), so that working capital can be produced directly from operations. Thus, the statement that the "need for working capital would be satisfied for the foreseeable future" has proved true, and plaintiffs' totally unsupported claim to the contrary cannot rebut the positive proof set forth in DASA's certified financial statements.

25. Plaintiffs next charge that the 1972 Proxy Statement omitted any explanation of the importance of the proposed sale to DASA and its magnitude in terms of the percentage of DASA's assets involved (Pl. Mem. p.20). Again, this is just not so. The 1972 Proxy Statement (p.7) states:

"The computer systems to be sold had a net book value of \$2,302,600 on January 10, 1972 representing approximately 19% of the book value of the Company's total assets..."

Thus, there can be no doubt that the magnitude of the proposed transaction in terms of the book value and percentage of DASA's assets involved was clearly disclosed. The 1972 Proxy Statement (p.7) also stated:

"...If such sale is not consummated, it might be necessary for the Company to borrow additional funds. At present the Company has made no arrangements for such additional borrowings and there can be no assurance that the Company will have the ability to make any such borrowing."

Plaintiffs uniquely untenable position is highlighted by their assertion of the importance of the sale which these very plaintiffs sought to torpedo, and their claim that DASA failed to disclose its importance. But the 1972 Proxy Statement itself belies plaintiffs' unsupported assertions.

26. Plaintiffs also allege that DASA improperly failed (a) to inform the stockholders that DASA intended to reduce the Debenture conversion price to encourage Debenture Holders to consent to the sale of the Equipment and Leases, (b) to disclose the dilutive effect of such proposed reduction, (c) to explain whether such dilution would be in the best interests of the stockholders and DASA and (d) to describe how the new conversion price would be determined (Pl. Mem. pp.20-22). Once again plaintiffs do not point to any statute or regulation requiring disclosure of the proposed Debenture conversion price reduction or a discourse on its effect in the 1972 Proxy Statement.

27. On December 12, 1971, DASA's Board of Directors had tentatively passed the new conversion price at \$32.00. I am informed that on January 24, 1972, DASA's common stock was trading in the over-the-counter market at approximately \$5.00 a share. Accordingly as a practical matter, there was no possibility of any rush to convert the Debentures, which are interest bearing, into DASA's common stock having a fraction of the value of the Debentures.

28. Aside from the fact that DASA's stockholders were not required to, and were not being called upon to,

approve or disapprove the sale of the Equipment and Leases and the reduction in the Debenture conversion price, the margin between the \$32.00 conversion price contemplated on January 24, 1972 and the market price of DASA common stock on that date was so great as to render the matter completely immaterial to DASA's stockholders.

29. Plaintiffs further assert that the 1972 Proxy Statement omitted any reference to the possible conflict of interest on the part of DASA's officers and directors who owned common stock in participating in the determination of the new Debenture conversion price. Plaintiffs' assertion is erroneous for several reasons:

(a) First, as hereinbefore discussed, not only was the reduction in the Debenture conversion price immaterial to the stockholders in respect of any possible dilutive effect on stockholders' equity, because of the tremendous disparity in the proposed new conversion price and the market price of the common stock, but, since stockholder action was neither required nor requested in respect of the sale of Equipment and Leases and the reduction in the Debenture conversion price, a lengthy explanation to the stockholders of all of the implications pertaining to those matters was not warranted. In fact, the very purpose of the proxy rules would be defeated by including in a proxy statement voluminous details of transactions, and particularly where consent to those transactions is not being solicited.

(b) Second, there was no such conflict of interest. The officers and directors of DASA did have an obligation to DASA and its stockholders to prevent corporate

waste by unduly diluting stockholders' equity. That obligation was neither diminished nor increased by the fact that officers and directors may have owned stock in DASA. It is a common practice (and in some jurisdictions even a requirement) that directors of a corporation own stock in the corporation. The purpose of this practice (or requirement) is to more closely identify the interests of the directors with those of the stockholders. Thus, stock ownership by officers and directors does not give rise to a conflict between the officers and directors and the stockholders, but in fact, tends to achieve exactly the opposite result.

(c) Third, the proxy rules specifically state that officers and directors interested in a transaction to which the issuer is to be a party need not disclose any interest of any such person in the transaction arising "solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class." (Instruction 2(d) to Item 7(f) Schedule 14A.)

(d) Fourth, the obligation of officers and directors to protect stockholders' equity does not mean that the corporation may not enter into a transaction having a possible dilutive effect for a fair consideration. Such a transaction might include the issuance of additional stock or stock purchase rights or warrants or securities convertible into stock or, as here, reduction in the conversion price, but such reduction was made in consideration for the consent by the Debenture Holders to the sale of the Equipment and Leases. Plain-

tiffs have not contended that the consideration received by DASA for the reduction in the conversion price was in any way unfair. Thus, it cannot be said that such reduction was not in the best interests of the stockholders in the context of the transaction in respect of which such reduction was made.

(e) Fifth, plaintiffs have heretofore contended that the officers and directors of DASA did not give due consideration to the Debenture Holders in determining the new conversion price. Thus, plaintiffs have contended that DASA's officers and directors represented the interests of the stockholders in the determination of the new conversion price of the Debentures. But plaintiffs' present motion for summary judgment appears to be made on behalf of the stockholders, if it is made on behalf of anyone (although the question of plaintiffs' right to represent the stockholders is sub judice). Thus, on this motion plaintiffs can hardly be heard to complain that officers and directors did not disclose to the stockholders that the officers and directors were representing their interests, as required by law, in a transaction with creditors of the corporation.

Moreover, as appears in the Memorandum of Law submitted herewith, plaintiffs novel proposition that DASA's officers and directors were in a position of conflicting fiduciary duties to the stockholders and Debenture Holders in determining a reduced conversion price is not only unsupportable, but is positively refuted by the applicable authorities. It is respectfully submitted that plaintiffs' disingenuous attempt to connect a conflict of interest as an attack on the 1972 Proxy Statement underscores the total lack of merit in plaintiffs' motion.

30. Again without any reference to a statute or regulation, plaintiffs allege that DASA wrongfully omitted any reference in the 1972 Proxy Statement to (i) the nature and immediacy of DASA's need for working capital, (ii) the availability of working capital from outside sources, (iii) the importance of the proposed sale of the Equipment and Leases, and (iv) alternatives available and probable consequences should the sale not proceed (Pl. Mem. p.22). But plaintiffs assertions are irrefutably proved false by the 1972 Proxy Statement itself. Thus, that document recites (p.7):

"As a result of losses incurred during the fiscal year ended October 31, 1971 and the continuing lower sales volume of Maricall products to Western, the Company may require additional working capital in excess of amounts presently available under its existing bank credit line. This need for working capital would be satisfied for the foreseeable future if the sale of the computer systems, as described above, is consummated. If such sale is not consummated, it might be necessary for the Company to borrow additional funds. At present the Company has made no arrangements for such additional borrowings and there can be no assurance that the Company will have the ability to make any such borrowing." (emphasis added)

In light of the fact that the stockholders were not being asked to approve the sale of the Equipment and Leases, but were merely being informed of a contemplated transaction in respect of which their approval was not required, this description of working capital problems, it is respectfully submitted, was clearly sufficient.

31. Plaintiffs' juxtapositioning of the 1972 Proxy Statement and the Solicitation Letter tends to mislead. The distinctly different nature of the matters before the stockholders and the Debenture holders dictated that the contents of the two documents be distinctly different. Thus, the stockholders, on the one hand, were presented with the

routine election of directors and ratification of the selection of auditors. The Debenture Holders, on the other hand, were being requested to consent to the sale of assets and were entitled to considerably more data upon which to make their decision.

32. The 1972 Proxy Statement must be viewed in the context of matters to be presented to the stockholders on February 29, 1972 -- the election of directors and the ratification of selection of auditors -- and not in the context of matters which plaintiffs erroneously assert should have been presented. It is respectfully submitted that when properly judged in the context of matters before the stockholders and against the requirements of the applicable statutes and regulations, and appropriate standards of reasonableness and materiality, the 1972 Proxy Statement fully and fairly discloses all matters required to be disclosed.

Plaintiffs' assertions that the 1971 Annual Report contains any false, deceptive or misleading statements or omissions are erroneous and, in addition, do not allege any claim under Federal law.

33. Plaintiffs' criticism of the 1971 Annual Report rests solely upon (a) an allegedly misleading phrase contained in Richard A. Reichter's nine paragraph President's Message and (b) the allegedly deceptive representation of the existence of an intangible asset valued at \$1.5 million on DASA's balance sheets. As will hereinafter appear, both criticisms are wholly without merit.

34. The President's Message (Ex. E, p.1) in part stated:

"Even though we were required to face the above mentioned difficulties during the past fiscal year, the financial position of our Company has been, none the less, significantly improved. During 1971, Corporate Indebtedness was reduced by more than 5.6 million dollars."

The quoted language is clear and unambiguous. Thus, the affidavit of Richard A. Reichter, sworn to the 7th day of April, 1972, submitted in opposition to plaintiffs' motion for a preliminary injunction stated (122):

"In Paragraph (21)(b) of the complaint, with reference to my statement that during the fiscal year ended October 31, 1971 the financial position of DASA had been significantly improved, plaintiffs attempt to substitute their uninformed opinion that this was not true. My statement was based on the facts that during the fiscal year ended October 31, 1971, in spite of the many problems faced by DASA, total corporate indebtedness was reduced by more than \$5,600,000." (emphasis added)

35. Moreover, plaintiffs' attempt to remove the statement from its proper context by completely ignoring Mr. Reichter's lengthy discussion of "the above-mentioned difficulties during the past fiscal year" which preceded his statement that DASA's financial position had significantly improved. The utter worthlessness of plaintiffs' assertion is completely established when that statement is read in the context of the entire President's Message (Ex. E, p. 1) and the accompanying financial statements, which clearly show the "difficulties" which plaintiffs ignore.

36. The utter futility of plaintiffs' strained attempt to establish a claim of falsity through distortion of a single phrase in the nine paragraph President's Message is readily apparent. But even more importantly, as appears in the 1971 Annual Report, DASA's financial position did indeed improve in 1971 by a more than \$5.6 million reduction in corporate indebtedness. Thus, DASA's certified financial statements (Ex. E, p. 5) show that -

(a) On October 31, 1970, the sum of DASA's total current liabilities (\$3,523,554) and long-term debt (\$9,306,646) was \$17,530,200; and

(b) On October 31, 1971, the sum of DASA's total current liabilities (\$5,037,545) and long-term debt (\$7,156,465) was \$12,194,010.

37. Plaintiffs also allege that DASA misrepresented its assets by including in its balance sheet an asset valued at \$1.5 million dollars (Pl. Mem. p.17). Once again, this is just not correct. DASA has repeatedly advised its stockholders that the \$1.5 million asset was an intangible asset representing the present and future earning capacity of Cyber-tronics, Inc. ("CTI") and its personnel.

38. DASA's consolidated balance sheet as of October 31, 1970 appearing on page 10 of DASA's 1970 Annual Report (Exhibit I submitted herewith) stated that the \$1,500,000 asset represented "EXCESS OF PURCHASE PRICE OVER NET ASSETS ACQUIRED" and referred to Note 1 to the financial statements, which Note clearly explained its derivation and nature.

39. The introductory portion of the 1970 Annual Report also stated in part (p.3) as follows:

"On the date of the merger of CTI, the excess of purchase price over the underlying book value of assets acquired was \$8,359,000, and such amount together with costs and expenses associated with the merger amounting to \$1,126,000 were originally set up on the books of the company as Goodwill. At year-end your management reviewed this intangible asset to determine whether any adjustment should be made on the carrying value of the Goodwill. Considering the future earning capacity of CTI and its other intangibles, a value of \$1,500,000 has been determined as the current value of the CTI Goodwill. This resulted in a chargeoff of the excess Goodwill in the amount of.....\$7,935,000." (Emphasis added)

40. The consolidated balance sheet as of October 31, 1971 appearing in DASA's 1971 Annual Report (Ex. E, p.4)

stated that the \$1,500,000 asset represented "Excess of Purchase Price Over Net Assets Acquired" and referred to Notes 1 and 3 to the financial statements.

Note 1 reads in part as follows:

"Management anticipates that the opportunity to sell or lease and install MAGICALL[®] on a direct basis in the United States will account for an increasing portion of the Company's business in the future; however, management recognizes that the success of this new direct program is contingent upon its ability to perform the functions previously performed by others. Management further anticipates that its field service organization will be utilized in connection with this new direct sales program as well as with the existing unit record equipment activities. In the opinion of management and the Company's Board of Directors, the remaining 'Excess of Purchase Price Over Net Assets Acquired' continues to have a value of \$1,500,000 because of these and other considerations." (Emphasis added)

41. Thus, it has repeatedly been made crystal clear to the stockholders that the \$1,500,000 asset is an intangible asset based upon the present and future earning capacity of the assets and personnel acquired from CII and, plaintiffs to the contrary notwithstanding, it is respectfully submitted that one need not be a trained financial analyst to understand that message. The fact that DASA's auditors highlighted the nature of this asset in their report (Ex. E) neither negates its existence nor affects the disclosure made by DASA as to its nature as aforesaid. That report, simply stated, points out to the reader that realization of the asset is contingent upon the earning capacity of the assets and personnel to which it pertains, which is essentially the same disclosure made by DASA in the financial statements.

42. Moreover, as appears in the Memorandum of Law submitted herewith, plaintiffs have not alleged any claim under Federal law with respect to the Annual Report, since

the Annual Report was not part of DASA's proxy soliciting materials and, accordingly, is not subject to attack under Section 14 of the Securities Exchange Act of 1934.

The Relief Requested

43. It is not clear whom plaintiffs are purporting to represent on this motion. The so-called Browning Debenture Holders' Committee has no standing to attack the 1972 Proxy Statement or the 1971 Annual Report; nor do any of its constituent members who do not own stock of DASA. And the one member of the so-called Committee who does own stock can hardly claim to represent the interests of DASA's stockholders, having allied himself with the so-called Committee which has pursued a course of conduct designed to harass DASA and which has been clearly shown to be detrimental to its best interests and the best interests of all of its security holders.

44. First, the so-called Committee has unsuccessfully attempted to block the sale by DASA of the Equipment and Leases while admitting that the sale was important to DASA and in its best interests, and which, as shown by DASA's certified financial statements, has achieved the desired result of eliminating DASA's working capital problems.

45. Second, as Judge Motley concluded (Ex. A, p. 7), plaintiffs apparently commenced this litigation to force a reduction in the conversion price of the Debentures to a figure which would result in a significant dilution in the equity of the very stockholders on whose behalf this motion is apparently made.

46. Now, the so-called Committee demands that DASA be ordered to expend a substantial amount of funds for the completely useless act of resoliciting proxies for the 1973 annual meeting. Since plaintiffs have not, and cannot, allege that anyone has been damaged by any of the transactions of

which they complain, they appear to make such demand out of desperation--without any showing of how it can possibly benefit anyone.

47. It has not yet been determined whom plaintiffs represent in this action, but the fact that plaintiffs seek to have DASA waste its assets makes clear that, in fact, they are representing the best interests of no one.

48. It is apparent from the foregoing that plaintiffs' attacks on the 1972 Proxy Statement and 1971 Annual Report are made solely for the purpose of harassing DASA and cannot be sustained, irrespective of the fact that plaintiffs have not even attempted to support those attacks with any evidence--which plaintiffs have not even sought by discovery.

49. DASA has been forced to incur a substantial expense in the defense of this unjustified litigation. There can be no valid purpose for having to expend any further time or funds in the defense of the proxy materials for the 1972 annual meeting or the 1971 Annual Report.

50. For the foregoing reasons, it is respectfully submitted that plaintiffs' motion for partial summary judgment should be denied in all respects, and DASA's cross-motion for partial summary judgment should be granted in all respects.

51. It is also respectfully submitted that because (a) plaintiffs' purported representation of the Debenture Holders has been overwhelmingly rejected by them, after having been informed of plaintiffs' claims and objectives (see Ex. A, pp. 3-4), (b) plaintiffs commenced this litigation solely to achieve the collateral purpose of forcing DASA to reduce the conversion price of the Debentures (see Ex. A, p. 7) and (c) plaintiffs have demonstrated their antagonism

to the interests of DASA and all of its security holders,
plaintiffs' Rule 23 motion, now pending before this Court,
should be denied in all respects.

J. Michael Bayda

J. Michael Bayda

Sworn to before me this
19th day of March, 1973.

John M. Bayda

Notary Public

Witness my hand
Notary Public
State of New York
County of Westchester
March 19, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :

72 CIV. 1332
T.P.G.

Plaintiffs, :

-against- :

DASA CORPORATION, et al., :

Defendants. :
-----X

Plaintiffs' Statement Pursuant to
Rule 9(g) of the General Rules of
the United States District Court
for the Southern District of New
York and Rule 56 of the Federal
Rules of Civil Procedure.

Plaintiffs submit that there is no genuine issue to be
tried with respect to each of the following material facts and
that each such fact exists for purposes of this action without
substantial controversy:

A - Dasa Corp. - 1972 Proxy Materials

(1) On or about January 24, 1972, defendant DASA Corpora-
tion ("DASA") sent or caused to be sent to holders of record
of its Common Stock (the "stockholders") as of the close of
business on January 14, 1972, in connection with DASA's 1972
Annual Meeting of Stockholders each of the following documents
(hereinafter sometimes referred to collectively as the "proxy
materials," true copies of which have been heretofore filed with
the court):

(a) a Notice of Annual Meeting of Stockholders
dated January 24, 1972, and subscribed "By Order
of the Board of Directors, Alma M. Smith, Assistant
Clerk" (the "notice of annual meeting");

- (b) a document entitled "PROXY STATEMENT - DASA CORPORATION - ANNUAL MEETING - February 29, 1972," dated January 24, 1972, and signed "By Order of the Board of Directors, RICHARD A. REICHTER, President" (the "proxy statement");
- (c) a form of proxy to be signed by the stockholder (the "proxy"); and
- (d) a document entitled, "DASA - ANNUAL REPORT - 1971" (the "1971 annual report").

(2) The notice of annual meeting and the proxy statement were drafted for DASA by its General Counsel, Jacobs, Persinger and Parker ("JP&P"), who consulted from time-to-time in the drafting thereof with various other persons, including officers of DASA.

(3) Within JP&P, work on the proxy statement was begun by Martin S. Wagner ("Wagner"), an attorney associated with JP&P, in November of 1971. Wagner devoted more time than any other attorney of JP&P to drafting of the proxy statement and did most of the work involved in such drafting.

(4) Under date of 1/27/72, Wagner wrote to Martin Lewis, Esq., of Investors Diversified Services, Inc., in Minneapolis, Minnesota enclosing final proxy materials for DASA's 1972 annual meeting.

(5) On 2/10/72, the law firm of Maull & Sôeiro ("M&S," then counsel for the parties who later became the plaintiffs herein) sent a letter bearing that date to the Corporate Trust Department of The Bank of New York (the "bank"), a defendant herein, with carbon copies to DASA, JP&P and the Securities and Exchange Commission (the "SEC" or the "Commission"). A true copy of that letter is attached hereto. On or about 2/16/72, M&S sent a revision of its letter dated 2/10/72 to the same recipients (True copy attached.)

(6) On 2/16/72 and 2/23/72, the law firm of Olin, Murphy, Manuel & Lynch ("OMM&L") sent a letter to M&S bearing that date, copies of which are attached hereto.

B - Proposed Proxy Statement of REB to DASA Stockholders.

(7) On 2/26/72, M&S sent a letter bearing that date to the SEC, enclosing for review and comments by the Commission staff a proposed "Proxy Statement of Roy E. Brewer" ("REB") for distribution to the stockholders of DASA in connection with its 1972 annual meeting. (Copies attached.) On that date, a copy of that letter and the REB proxy statement were delivered to JP&P and to DASA.

(8) A copy of the REB proxy statement was delivered personally to every member of DASA's board of directors prior to the DASA 1972 annual meeting held on 2/29/72.

(9) The contents of the REB proxy statement were referred-to and discussed by Bradley R. Brewer, an attorney for the plaintiffs herein, during a presentation made by him to the organization meeting of DASA's board following the 1972 annual meeting. During that meeting, all members of the board present indicated to Mr. Brewer that they had received a copy of the REB proxy statement prior to the annual meeting.

(10) On 3/7/72, M&S sent a letter to the SEC in the form attached hereto setting forth the "factual background" of the REB proxy statement.

C - The Dasa March 9 Letter to Debenture Holders.

(11) On or about 3/9/72, DASA sent a letter bearing that date to the holders of its 6% Convertible Subordinated Debentures due July 1, 1987 (the "March 9 letter" or the "solicitation letter"; the "debenture holders"; and the "debentures," respectively). A true copy thereof has been filed previously with the court.

(12) On 3/9/72, M&S sent a letter to the SEC enclosing a proposed form of proxy and proxy statement of the Browning Debenture Holders' Committee "with respect to the proposed Meeting of holders of" the debentures. (Copy of cover letter attached.)

(13) On 3/16/72, M&S mailed to DASA by certified mail a letter demanding that a statement in the form attached be included in DASA's proxy statement to the debenture holders.

(14) When M&S sent its letters dated 3/9/72 and 3/16/72, it was not aware that the DASA March 9 letter had been sent to the debenture holders.

D - Proposed Browning Committee Proxy Statement to Debenture Holders.

(15) On 3/18/72, M&S sent to the SEC a revision bearing that date of the proposed Browning Committee proxy statement for the debenture holders. (Copy of letter and enclosure attached.)

(16) On 3/19/72, M&S sent to DASA a letter demanding a prompt response to its letter dated 3/16/72 and stating that a copy of the March 9 solicitation letter to the debenture holders was not sent to Bradley R. Brewer, of counsel to M&S, despite the fact that he was listed twice on the records of DASA as a holder of the debentures. (Copy attached.)

(17) On 3/17/72, OMM&L sent a letter bearing that date to M&S. (Copy attached.)

(18) On 3/21/72, M&S sent a letter bearing that date to the bank. (Copy attached.)

(19) On 3/23/72, M&S sent a letter bearing that date to the bank. (Copy attached.)

(20) On or about 4/21/72, DASA mailed or caused to be mailed to the debenture holders a letter supplementing the March 9 letter. (Copy filed previously with the court.)

(21) On 5/1/72, M&S sent to the SEC a revision of the Browning Committee's proposed proxy statement to debenture holders made in light of written comments received from the Commission in a letter of comments dated 3/23/72.

(22) On 5/11/72, M&S sent a letter to counsel for the bank bearing that date. (Copy attached.)

E - The Present Action.

(23) The present action was commenced on 3/30/72. At that time, plaintiffs made a motion for a preliminary injunction against the proposed sale by DASA to Datatron Corporation of certain IBM 360 computer systems, peripheral equipment and leases thereon and a related amendment to the trust indenture covering the debentures upon the ground that the "consents" solicited and obtained through use of the March 9 letter should not, in law and in equity, be relied-upon as valid until appropriate action was taken to correct certain material defects of disclosure which the plaintiffs alleged were contained in that letter in violation of Section 14(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") and the so-called "proxy rules" issued by the SEC thereunder. A request for a temporary restraining order was dropped pursuant to an agreement reached between plaintiffs and DASA at a hearing on plaintiffs' request for such relief under which DASA agreed, through JP&P, not to sell as much as two per cent of the computers in question pending determination of plaintiffs' motion for a temporary injunction. (See letter from JP&P to M&S dated 3/31/72, copy attached.)

(24) On 5/8/72, this court, per C.B. Motley, D.J., filed an opinion bearing that date denying plaintiffs' motion for a preliminary injunction.

(25) On 5/8/72, when notice of Judge Motley's decision was received by counsel for the plaintiffs, attorneys from M&S

and plaintiff Simms C. Browning were in the SEC's offices in Washington, D.C., attempting to work out with the SEC a form of proxy statement acceptable to the SEC for submission by the Browning Committee to the Debenture holders.

(26) Judge Motley's decision effectively mooted the Browning Committee's efforts to clear through the SEC and distribute to the debenture holders a counter proxy statement presenting its views as to the merits and lack thereof of the proposed sale of computers.

(27) The indenture was amended on 5/15/72 and the equipment and leases were sold on 6/1/72.

(28) Plaintiffs appealed the decision of Judge Motley.

(29) After the sale was completed, DASA moved, on 8/17/72, in the Court of Appeals to dismiss the appeal on the ground that it was moot. Plaintiffs opposed the motion on the ground that the Supreme Court had decided and held in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), that the completion of a corporate transaction such as this does not end the use or the interest therein by the courts because other relief than prevention of the transaction may be appropriate in the circumstances after the fact, if violations of the federal proxy laws in fact took place. The Court of Appeals granted DASA's motion and dismissed the appeal in an order dated 9/12/72.

F - Disposition by DASA of the Proceeds of the Sale of Computers.

(30) On or about 5/12/72, Datatron Corporation sent a letter bearing that date to "All Creditors of DASA CORPORATION" a true copy of which is attached hereto.

(31) The proceeds received by DASA from the sale of computers to Datatron were applied as set forth in Datatron's letter dated 5/12/72.

(32) Promptly after the sale of computers to Datatron, the following sums were paid to the parties indicated from the

\$2,350,000 (plus or minus adjustments) paid by Datatron at the closing of the sale:

To IBM in payment of a purchase-money mortgage loan	\$156,632.49
To First National City Bank of New York City in payment of loans made pursuant to a line of credit originally issued to Cyber-Tronics, Inc. prior to its acquisition by DASA	625,187.44
To New England Merchants' National Bank of Boston in payment of loans made pursuant to a line of credit secured by certain accounts receivable of DASA (approximate)	794,634.85

(33) The line of credit to DASA from the New England Merchants' Bank of Boston was not maintained or renewed after payment in full of the amounts due thereunder after the closing of the sale to Datatron.

(34) No new sources of loans for working capital funds were available to DASA at any time within four months after the sale to Datatron which were not previously available.

G - Miscellaneous Facts.

(35) At all times relevant to this action, three members of the plaintiff Browning Committee owned, collectively \$127,000 face amount of the debentures.

(36) At all times relevant to this action, Roy E. Brewer owned of record 700 shares of DASA's Common stock.

(37) At all times relevant to this action, Roy E. Brewer was the owner of record of both debentures and Common stock of DASA.

(38) Edgar B. Stern, Jr., resigned from DASA's board of directors after its 1972 annual meeting and before its 1973 annual meeting.

(39) Only one director of DASA disqualified himself from participation in the decision and vote of the board made at

the 1972 organization meeting on 2/29/72 to fix the proposed new debenture conversion price at \$21. That director was Ernest T. Greeff.

(40) Officers and directors of DASA held the securities of DASA indicated on the schedule attached hereto and headed "Dasa Management's 'Equity Holdings'" on the dates indicated on that schedule. (Copy attached.)

(41) In connection with the proposed sale of computers to Datatron and the proposed and related solicitation of consents from the debenture holders, DASA's management and/or its board of directors first fixed the proposed new conversion price at \$32. That figure was incorporated in the first draft of the first solicitation letter when that draft was sent to the SEC for review as a proxy statement.

(42) After the proposed conversion price was fixed at \$32 and before 2/29/72, an offer was made to plaintiffs' counsel of a lower such price of \$25 on behalf of DASA's management.

(43) At the meeting of DASA's board on 2/29/72 following the annual meeting and after a presentation was made to that board meeting by counsel for the plaintiffs in which he (i) referred to the proposed proxy statement to stockholders of Roy E. Brewer and the points made therein and (ii) argued that it would be grossly unfair to the debenture holders and a violation of a legal or equitable duty of fair treatment owed by the board to the debenture holders for the new conversion price to be fixed at either \$32 or \$25, the board voted to reduce the proposed conversion price to \$21, the price subsequently incorporated in the March 9 solicitation letter.

(44) Both prior to and at the board meeting on 2/29/72, plaintiffs had pointed out to DASA's management, including its board, (a) that because the board was elected solely by the shareholders and the interests of the shareholders and those of

the debenture holders were in conflict on the matter of an appropriate and equitable new conversion price, an unavoidable shadow of doubt, bias, and possible illegality or invalidity would be cast upon any decision made by the board on the conversion price question unless careful measures were taken in determining the price which would demonstrate objectivity, fairness and sound financial analysis in its determination; (b) that to alleviate such doubt and questions the method used in deciding upon the price selected and the rationale for that price should be publicly announced; (c) that an independent expert opinion should be obtained by DASA as the basis for determining the new conversion price; and (d) that resort to such expert counsel is a procedure commonly used in the financial community in a difficult situation such as this.

(45) DASA management rejected a proposal presented by plaintiffs prior to the 1972 annual meeting that the board should obtain an opinion from an independent and unbiased financial analyst as to what price range the proposed new conversion price should fall within.

(46) Plaintiffs stated to DASA management prior to and on 2/29/72 (i) that they believed a new conversion price of \$32, or \$25, or any figure over \$12 would be arbitrary, irrational, unfair to the debenture holders and a violation of management's duty of fairness and equity to the debenture holders and (ii) that they intended to commence suit to determine the rights of the debenture holders if fair, open and reasonable procedures satisfactory to them were not used in fixing the new conversion price.

(47) DASA management rejected a proposal made by the plaintiffs prior to and at the 1972 annual meeting that such meeting be adjourned for a period of sixty days (or some other reasonable period) so that the shareholders could be given notice

of the problem that had arisen over the proposed new conversion price and the likelihood of litigation if resort was not made to an independent expert opinion on the new conversion price as proposed by the plaintiffs.

(48) At its organization meeting on 2/29/72, DASA's board fixed the proposed new conversion price at \$21.

(49) DASA management did not obtain an independent, expert opinion from a qualified financial analyst in connection with selection of a proposed new conversion price at any time prior to 2/29/72. No such opinion was obtained by DASA at any time prior to closing of the sale to Datatron.

(50) Between 10/31/70 and 10/31/72, the financial condition of DASA had not significantly improved. In fact, that condition had significantly deteriorated or declined during that period of time.

(51) Between 10/31/70 and 10/31/72, the general financial condition of DASA had declined to a point where insolvency and bankruptcy were possibilities that had to be seriously considered by its management. Such possibilities were in fact seriously considered by its management.

(52) In the financial statements included in its 1971 annual report, DASA included, in stating its asset position, an asset valued at \$1.5 million which DASA's firm of auditors and certified accountants had refused to certify as existing under generally accepted principles of public accounting.

(53) The sale of computers to Datatron did not in fact eliminate DASA's need for sources of working capital from outside the corporation (a) for a period of three months after closing of the sale, (b) for a period of six months thereafter, (c) for a period of nine months thereafter, or (d) for a period of one year thereafter. DASA's need for such sources of outside working capital funds has not been satisfied or eliminated to date.

(54) Nowhere in the proxy statement did DASA management state that a proposed new and reduced debenture conversion price would be offered to the debenture holders in connection with the proposed sale of computers to Datatron.

(55) Nowhere in its text does the proxy statement state that a substantial reduction of the debenture conversion price in connection with the proposed sale of computers would have the effect of creating substantial potential dilution of the equity interest of the stockholders prior to such reduction, in favor of the debenture holders.

(56) Nowhere in its text does the proxy statement provide any reasons or explanation for the stockholders as to why the imposition of such substantial potential dilution would or would not be in the best interests of (i) the stockholders as a group or (ii) the corporation as a whole.

(57) The form of proxy distributed in connection with DASA's 1972 annual meeting did not provide the voting shareholders with an opportunity to approve or disapprove the proposed sale of computers.

(58) Nowhere in its text does the proxy statement indicate the existence of a possible conflict of interest by any officer or director of DASA who might participate in a decision to reduce the debenture conversion price in connection with the proposed sale of computers.

(59) Nowhere in its text does the proxy statement set forth or indicate (a) the nature, extent, immediacy and seriousness of DASA's need at that time for additional working capital funds, (b) the availability (or absence thereof) of sources for such funds from outside the corporation, (c) the importance to DASA of its acquiring additional working capital through the proposed sale of computers, (d) the alternatives, if any, available to DASA for acquiring such funds if the proposed sale of

computers should fall through, or (e) the possible or probable consequences for DASA if that sale should fall through.

(60) Nowhere in its text does the proxy statement explain or indicate what was meant by the term "forseeable future" used on page 7.

(61) Neither the proxy statement nor the 1971 annual report was mailed to the debenture holders as a group.

(62) Neither the March 9 solicitation letter nor the April 21 supplement thereto was mailed to the shareholders as a group.

(63) Nowhere in its text did the March 9 letter explain that a new conversion price of \$21 would give each debenture an arithmetic "conversion value" of less than \$150, or less than half of its then current market value.

(64) Nowhere in its text did the proxy statement indicate that the proposed computer sale transaction would involve potential dilution of the shareholders' equity interest through a reduction in the conversion price of DASA's convertible preferred stock, which price was later reduced by approximately one-third, from \$19.92 to \$13.00.

(65) Of the approximately \$2.35 million in further cash consideration paid by Datatron for the computers purchased by it, approximately \$2.214 million was paid out by DASA promptly after closing of the sale to holders of "senior debt."

(66) The computer assets sold to Datatron yielded to DASA a net, annual, positive, cash contribution to working capital of between \$50,000 and \$100,000 after allocation to those assets of reasonable expenses.

(67) The computer assets sold to Datatron constituted the only remaining, readily salable and substantial bundle of assets which DASA could sell in order to raise necessary working capital at that time.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :
Plaintiffs, : 72 Civ. 1332 TPG
-against- :
DASA CORPORATION, et al., :
Defendants. :
-----x

Defendant DASA Corporation's
Response to Plaintiffs' State-
ment Purportedly Served Pur-
suant to Rule 9(g) of the
General Rules of the United
States District Court for
the Southern District of
New York

Dated: May 4, 1973

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Defendant DASA Corporation's
Response to Plaintiffs' State-
ment Purportedly Served Pur-
suant to Rule 9(g) of the
General Rules of the United
States District Court for
the Southern District of
New York

Defendant DASA Corporation ("DASA") responds to plaintiffs' purported Rule 9(g) statement as follows*:

FIRST: Paragraph (1) is admitted except that the document entitled "DASA Annual Report 1971" was not a part of proxy solicitation materials sent to DASA's stockholders in connection with DASA's 1972 annual meeting of stockholders.

SECOND: Paragraphs (2) and (3) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

THIRD: The documents referred to and the events alleged in paragraphs (4), (5) and (6) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

FOURTH: The documents referred to in paragraphs (7) and (10) and the events alleged in paragraphs (7), (8), (9) and (10) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

FIFTH: The documents referred to and the events alleged in paragraphs (11), (12), (13) and (14) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

*All characterizations of documents are denied and reference is made to each document for the contents thereof. Allegations responded to as irrelevant are not admitted.

SIXTH: The documents referred to and the events alleged in paragraphs (15), (16), (17), (18), (19), (20), (21) and (22) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

SEVENTH: Responding to paragraphs (23), (24) (25), (26), (28) and (29), which are in any event irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint, reference is made in the pleadings and record of all prior proceedings herein for the details thereof.

EIGHTH: The document referred to in paragraph (30) and the events alleged in paragraphs (30), (31), (32), (33) and (34) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

NINTH: Denies knowledge or information sufficient to respond to the allegations of paragraphs (35), (36) and (37).

TENTH: The allegations of paragraphs (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48) and (49) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

ELEVENTH: Further, with respect to paragraph (39), asserts that Ernest T. Greeff abstained from voting on the resolutions to reduce the debenture conversion price because he, unlike any other director, held debentures, and with respect to paragraph (47), asserts that plaintiffs' counsel appeared at the 1972 annual meeting demanding adjournment after all business at the meeting

had been completed, and his motion to that effect was defeated.

TWELFTH: Further, with respect to paragraph (40), reference is made to pages 24, 25 and 32 of the March 9, 1972 solicitation letter to debenture holders for a description of the DASA securities owned by officers and directors of DASA as of December 7, 1971 and options to purchase shares of DASA's common stock granted to said officers and directors unexercised at January 12, 1972.

THIRTEENTH: Denies the totally unsupported allegations contained in paragraphs (50) and (51), and makes reference to DASA's certified financial statements for the fiscal year ended October 31, 1971 and October 31, 1972.

FOURTEENTH: Responding to paragraph (52), reference is made to DASA's certified financial statements for the fiscal year ended October 31, 1971.

FIFTEENTH: Denies the totally unsupported allegations contained in paragraph (53), and makes reference to DASA's certified financial statements for the year ended October 31, 1972.

SIXTEENTH: Responding to the allegations contained in paragraphs (54), (55), (56), (57), (58), (59) and (60), denies that DASA was required to include in the proxy statement distributed in connection with DASA's 1972 annual meeting of stockholders the statements or explanations in said paragraphs and denies that DASA was required to provide its stockholders with an opportunity to approve or disapprove the proposed sale of computers, and with respect to paragraph (58), denies that there was any such conflict.

Ernest T. Greeff, the only director who held debentures, abstained from voting on the resolution to reduce the conversion price of the debentures.

SEVENTEENTH: Responding to the allegations contained in paragraph (61), denies that DASA was required to mail the proxy statement distributed in connection with the DASA's 1972 annual meeting of stockholders and DASA's 1971 Annual Report to DASA's debenture holders.

EIGHTEENTH: Responding to the allegations contained in paragraph (62), denies that DASA was required to mail the March 9, 1972 solicitation letter to debenture holders or the April 21, 1972 supplement thereto to DASA's stockholders.

NINETEENTH: The allegations of paragraphs (63), (64), (65), (66) and (67) are irrelevant to the allegations contained in Claims 1 and 2 of the Amended Complaint.

TWENTIETH: In further response to plaintiffs' purported Rule 9(g) statement, asserts that Claims 1 and 2 of the Amended Complaint are addressed to DASA's proxy materials distributed in connection with its 1972 annual meeting of stockholders and DASA's 1971 Annual Report. Accordingly, plaintiffs' purported Rule 9(g) statement has no relevance to the present motions, since the only issues presented thereby are (1) whether those documents are materially false and misleading in violation of Federal law and (2) whether those claims are now moot.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :

Plaintiffs, :

72 CIV. 1332
T.P.G.

-against- :

DASA CORPORATION, et al., :

REQUEST FOR ADMISSION
OF FACTS, NO. 1

Defendants. :
-----X

PLEASE TAKE NOTICE that the plaintiff requests defendant DASA Corporation within 30 days after service of this request for admissions, for the purposes of this action only, and subject to all pertinent objections to admissibility which may be interposed at the trial of this action, to admit the truth of the following facts:

(1) On or about January 24, 1972, defendant DASA Corporation ("DASA") sent or caused to be sent to holders of record of its Common Stock (the "stockholders") as of the close of business on January 14, 1972, in connection with DASA's 1972 Annual Meeting of Stockholders each of the following documents (hereinafter sometimes referred-to collectively as the "proxy materials," true copies of which have been heretofore filed with the court):

(a) a Notice of Annual Meeting of Stockholders dated January 24, 1972, and subscribed "By Order of the Board of Directors, Alma M. Smith, Assistant Clerk" (the "notice of annual meeting");

(b) a document entitled "PROXY STATEMENT - DASA CORPORATION - ANNUAL MEETING - February 29, 1972," dated January 24, 1972 and signed "By Order of

the Board of Directors, RICHARD A. REICHTER, President" (the "proxy statement");

(c) a form of proxy to be signed by the stockholder (the "proxy"); and

(d) a document entitled, "DASA - ANNUAL REPORT - 1971" (the "1971 annual report").

(2) The notice of annual meeting and the proxy statement were drafted for DASA by its General Counsel, Jacobs, Persinger and Parker ("JP&P"), who consulted from time-to-time in the drafting thereof with various other persons, including officers of DASA.

(3) Within JP&P, work on the proxy statement was begun by Martin S. Wagner ("Wagner"), an attorney associated with JP&P, in November of 1971. Wagner devoted more time than any other attorney of JP&P to drafting of the proxy statement and did most of the work involved in such drafting.

(4) Under date of 1/27/72, Wagner wrote to Martin Lewis, Esq., of Investors Diversified Services, Inc., in Minneapolis, Minnesota enclosing final proxy materials for DASA's 1972 annual meeting.

(5) On 2/10/72, the law firm of Maull & Soeiro ("M&S," then counsel for the parties who later became the plaintiffs herein) sent a letter bearing that date to the Corporate Trust Department of The Bank of New York (the "bank"), a defendant herein, with carbon copies to DASA, JP&P and the Securities and Exchange Commission (the "SEC" or the "Commission"). On or about 2/16/72, M&S sent a revision of its letter dated 2/10/72 to the same recipients.

(6) On 2/16/72 and 2/23/72, the law firm of Olin, Murphy, Manuel & Lynch ("OMM&L") sent a letter to M&S bearing that date.

(7) On 2/26/72, M&S sent a letter bearing that date to the SEC, enclosing for review and comments by the Commission staff a proposed "Proxy Statement of Roy E. Brewer" ("REB") for distribution to the stockholders of DASA in connection with its 1972 annual meeting. On that date, a copy of that letter and the REB proxy statement were delivered to JP&P and to DASA.

(8) A copy of the REB proxy statement was delivered personally to every member of DASA's board of directors prior to the DASA 1972 annual meeting held on 2/29/72.

(9) The contents of the REB proxy statement were referred-to and discussed by Bradley R. Brewer, an attorney for the plaintiffs herein, during a presentation made by him to the organization meeting of DASA's board following the 1972 annual meeting. During that meeting, all members of the board present indicated to Mr. Brewer that they had received a copy of the REB proxy statement prior to the annual meeting.

(10) On 3/7/72, M&S sent a letter to the SEC setting forth the "factual background" of the REB proxy statement.

(11) On or about 3/9/72, DASA sent a letter bearing that date to the holders of its 6% Convertible Subordinated Debentures due July 1, 1987 (the "March 9 letter" or the "solicitation letter"; the "debenture holders"; and the "debentures," respectively).

(12) On 3/9/72, M&S sent a letter to the SEC enclosing a proposed form of proxy and proxy statement of the Browning Debenture Holders' Committee "with respect to the proposed Meeting of holders of" the debentures.

(13) On 3/16/72, M&S mailed to DASA by certified mail a letter demanding that a statement in the form attached be included in DASA's proxy statement to the debenture holders.

(14) When M&S sent its letters dated 3/9/72 and 3/16/72, it was not aware that the DASA March 9 letter had been sent to the debenture holders.

(15) On 3/18/72, M&S sent to the SEC a revision bearing that date of the proposed Browning Committee proxy statement for the debenture holders.

(16) On 3/19/72, M&S sent to DASA a letter demanding a prompt response to its letter dated 3/16/72 and stating that a copy of the March 9 solicitation letter to the debenture holders was not sent to Bradley R. Brewer, of counsel to M&S, despite the fact that he was listed twice on the records of DASA as a holder of the debentures.

(17) On 3/17/72, OMM&L sent a letter bearing that date to M&S.

(18) On 3/21/72, M&S sent a letter bearing that date to the bank.

(19) On 3/23/72, M&S sent a letter bearing that date to the bank.

(20) On or about 4/21/72, DASA mailed or caused to be mailed to the debenture holders a letter supplementing the March 9 letter.

(21) On 5/1/72, M&S sent to the SEC a revision of the Browning Committee's proposed proxy statement to debenture holders in light of written comments received from the Commission in a letter of comments dated 3/23/72.

(22) On 5/11/72, M&S sent a letter to counsel for the bank, bearing that date.

(23) The present action was commenced on 3/30/72. At that time, plaintiffs made a motion for a preliminary injunction against the proposed sale by DASA to Datatron Corporation of certain IBM 360 computer systems, peripheral equipment and leases thereon and a related amendment to the trust indenture covering the debentures upon the ground that the "consents" solicited and obtained through use of the March 9 letter should not, in law and in equity, be relied-upon as valid until appropriate

action was taken to correct certain material defects of disclosure which the plaintiffs alleged were contained in that letter in violation of Section 14(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") and the so-called "proxy rules" issued by the SEC thereunder. A request for a temporary restraining order was dropped pursuant to an agreement reached between plaintiffs and a hearing on plaintiffs' request for such relief under which DASA agreed, through JP&P, not to sell as much as two per cent of the computers in question pending determination of plaintiff's motion for a temporary injunction.

(24) On 5/8/72, the United States District Court for the Southern District of New York, per C.B. Motley, D.J., filed an opinion bearing that date denying plaintiffs' motion for a preliminary injunction.

(25) On 5/8/72, when notice of Judge Motley's decision was received by counsel for the plaintiffs, attorneys from M&S and plaintiff Simms C. Browning were in the SEC's offices in Washington, D.C., attempting to work out with the SEC a form of proxy statement acceptable to the SEC for submission by the Browning Committee to the Debenture holders.

(26) Judge Motley's decision effectively mooted the Browning Committee's efforts to clear through the SEC and distribute to the debenture holders a counter proxy statement presenting its views as to the merits and lack thereof of the proposed sale of computers.

(27) The indenture was amended on 5/15/72 and the equipment and leases were sold on 6/1/72.

(28) Plaintiffs appealed the decision of Judge Motley.

(29) After the sale was completed, DASA moved, on 8/17/72, in the Court of Appeals to dismiss the appeal on the ground that it was moot. Plaintiffs opposed the motion on the ground that the Supreme Court had decided and held in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), that the completion

of a corporate transaction such as this does not end the case or the interest therein by the courts because other relief than prevention of the transaction may be appropriate in the circumstances after the fact, if violations of the federal proxy laws in fact took place. The Court of Appeals granted DASA's motion and dismissed the appeal in an order dated 9/12/72.

(30) On or about 5/12/72, Datatron Corporation sent a letter bearing that date to "All Creditors of DASA CORPORATION".

(31) The proceeds received by DASA from the sale of computers to Datatron were applied as set forth in Datatron's letter dated 5/12/72.

(32) Promptly after the sale of computers to Datatron, the following sums were paid to the parties indicated from the \$2,350,000 (plus or minus adjustments) paid by Datatron at the closing of the sale:

To	IBM in payment of a purchase-money mortgage loan	\$156,632.49
To	First National City Bank of New York City in payment of loans made pursuant to a line of credit originally issued to Cyber-Tronics, Inc. prior to its acquisition by DASA	625,187.44
To	New England Merchants' National Bank of Boston in payment of loans made pursuant to a line of credit secured by certain accounts receivable of DASA (approximate)	794,634.85

(33) The line of credit to DASA from the New England Merchants' Bank of Boston was not maintained or renewed after payment in full of the amounts due thereunder after the closing of the sale to Datatron.

(34) No new sources of loans for working capital funds were available to DASA at any time within four months after the sale to Datatron which were not previously available.

(35) At all times relevant to this action, three members of the plaintiff Browning Committee owned, collectively \$127,000 face amount of the debentures.

(36) At all times relevant to this action, Roy E. Brewer owned of record 700 shares of DASA's Common stock.

(37) At all times relevant to this action, Roy E. Brewer was the owner of record of both debentures and Common stock of DASA.

(38) Edgar B. Stern, Jr., resigned from DASA's board of directors after its 1972 annual meeting and before its 1973 annual meeting.

(39) Only one director of DASA disqualified himself from participation in the decision and vote of the board made at the 1972 organization meeting on 2/29/72 to fix the proposed new debenture conversion price at \$21. That director was Ernest T. Greeff.

(40) Officers and directors of DASA held the securities of DASA indicated on the schedule attached hereto and headed "Dasa Management's 'Equity Holdings'" on the dates indicated on that schedule.

(41) In connection with the proposed sale of computers to Datatron and the proposed and related solicitation of consents from the debenture holders, DASA's management and/or its board of directors first fixed the proposed new conversion price at \$32. That figure was incorporated in the first draft of the first solicitation letter when that draft was sent to the SEC for review as a proxy statement.

(42) After the proposed conversion price was fixed at \$32 and before 2/29/72, an offer was made to plaintiffs' counsel of a lower such price of \$25 on behalf of DASA's management.

(43) At the meeting of DASA's board on 2/29/72 following the annual meeting and after a presentation was made to that board meeting by counsel for the plaintiffs in which he (i) referred to the proposed proxy statement to stockholders of Roy E. Brewer and the points made therein and (ii) argued that it would be grossly unfair to the debenture holders and a violation of

a legal or equitable duty of fair treatment owed by the board to the debenture holders for the new conversion price to be fixed at either \$32 or \$25, the board voted to reduce the proposed conversion price to \$21, the price subsequently incorporated in the March 9 solicitation letter.

(44) Both prior to and at the board meeting on 2/29/72, plaintiffs had pointed out to DASA's management, including its board, (a) that because the board was elected solely by the shareholders and the interests of the shareholders and those of the debenture holders were in conflict on the matter of an appropriate and equitable new conversion price, an unavoidable shadow of doubt, bias, and possible illegality or invalidity would be cast upon any decision made by the board on the conversion price question unless careful measures were taken in determining the price which would demonstrate objectivity, fairness and sound financial analysis in its determination; (b) that to alleviate such doubt and questions the method used in deciding upon the price selected and the rationale for that price should be publicly announced; (c) that an independent expert opinion should be obtained by DASA as the basis for determining the new conversion price; and (d) that resort to such expert counsel is a procedure commonly used in the financial community in a difficult situation such as this.

(45) DASA management rejected a proposal presented by plaintiffs prior to the 1972 annual meeting that the board should obtain an opinion from an independent and unbiased financial analyst as to what price range the proposed new conversion price should fall within.

(46) Plaintiffs stated to DASA management prior to and on 2/29/72 (i) that they believed a new conversion price of \$32, or \$25, or any figure over \$12 would be arbitrary, irrational, unfair to the debenture holders and a violation of management's

duty of fairness and equity to the debenture holders and (ii) that they intended to commence suit to determine the rights of the debenture holders if fair, open and reasonable procedures satisfactory to them were not used in fixing the new conversion price.

(47) DASA management rejected a proposal made by the plaintiffs prior to and at the 1972 annual meeting that such meeting be adjourned for a period of sixty days (or some other reasonable period) so that the shareholders could be given notice of the problem that had arisen over the proposed new conversion price and the likelihood of litigation if resort was not made to an independent expert opinion on the new conversion price as proposed by the plaintiffs.

(48) At its organization meeting on 2/29/72, DASA's board fixed the proposed new conversion price at \$21.

(49) DASA management did not obtain an independent, expert opinion from a qualified financial analyst in connection with selection of a proposed new conversion price at any time prior to 2/29/72. No such opinion was obtained by DASA at any time prior to closing of the sale to Datatron.

(50) Between 10/31/70 and 10/31/72, the financial condition of DASA had not significantly improved. In fact, that condition had significantly deteriorated or declined during that period of time.

(51) Between 10/31/70 and 10/31/72, the general financial condition of DASA had declined to a point where insolvency and bankruptcy were possibilities that had to be seriously considered by its management. Such possibilities were in fact seriously considered by its management.

(52) In the financial statements included in its 1971 annual report, DASA included, in stating its asset position, an asset valued at \$1.5 million which DASA's firm of auditors and certified accountants had refused to certify as existing under

generally accepted principles of public accounting.

(53) The sale of computers to Datatron did not in fact eliminate DASA's need for sources of working capital from outside the corporation (a) for a period of three months after closing of the sale, (b) for a period of six months thereafter, (c) for a period of nine months thereafter, or (d) for a period of one year thereafter. DASA's need for such sources of outside working capital funds has not been satisfied or eliminated to date.

(54) Nowhere in the proxy statement did DASA management state that a proposed new and reduced debenture conversion price would be offered to the debenture holders in connection with the proposed sale of computers to Datatron.

(55) Nowhere in its text does the proxy statement state that a substantial reduction of the debenture conversion price in connection with the proposed sale of computers would have the effect of creating substantial potential dilution of the equity interest of the stockholders prior to such reduction, in favor of the debenture holders.

(56) Nowhere in its text does the proxy statement provide any reasons or explanation for the stockholders as to why the imposition of such substantial potential dilution would or would not be in the best interests of (i) the stockholders as a group or (ii) the corporation as a whole.

(57) The form of proxy distributed in connection with DASA's 1972 annual meeting did not provide the voting shareholders with an opportunity to approve or disapprove the proposed sale of computers.

(58) Nowhere in its text does the proxy statement indicate the existence of a possible conflict of interest by any officer or director of DASA who might participate in a decision to reduce the debenture conversion price in connection with the proposed sale of computers.

(59) Nowhere in its text does the proxy statement set forth or indicate (a) the nature, extent, immediacy and seriousness of DASA's need at that time for additional working capital funds, (b) the availability (or absence thereof) of sources for such funds from outside the corporation, (c) the importance to DASA of its acquiring additional working capital through the proposed sale of computers, (d) the alternative, if any, available to DASA for acquiring such funds if the proposed sale of computers should fall through, or (e) the possible or probable consequences for DASA if that sale should fall through.

(60) Nowhere in its text does the proxy statement explain or indicate what was meant by the term "forseeable future" used on page 7.

(61) Neither the proxy statement nor the 1971 annual report was mailed to the debenture holders as a group.

(62) Neither the March 9 solicitation letter nor the April 21 supplement thereto was mailed to the shareholders as a group.

(63) Nowhere in its text did the March 9 letter explain that a new conversion price of \$21 would give each debenture an arithmetic "conversion value" of less than \$150, or less than half of its then current market value.

(64) Nowhere in its text did the proxy statement indicate that the proposed computer sale transaction would involve potential dilution of the shareholders' equity interest through a reduction in the conversion price of DASA's convertible preferred stock, which price was later reduced by approximately one-third, from \$19.92 to \$13.00.

(65) Of the approximately \$2.35 million in further cash consideration paid by Datatron for the computers purchased by it, approximately \$2.214 million was paid out by DASA promptly after closing of the sale to holders of "senior debt."

(66) The computer assets sold to Datatron yielded to DASA a net, annual, positive, cash contribution to working capital of between \$50,000 and \$100,000 after allocation to those assets of reasonable expenses.

(67) The computer assets sold to Datatron constituted the only remaining, readily salable and substantial bundle of assets which DASA could sell in order to raise necessary working capital at that time.

Dated: New York, N.Y.
August 10, 1973

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Foley Square
New York, N. Y. 10007

EXHIBIT E

DASA MANAGEMENT'S "EQUITY HOLDINGS"

A129

Name	Number of Shares of Common Stock Benefici- ally Owned t 12/7/71 (1)	Common Stock (and Debentures Convert- ible into Common Stock) which Manage- ment (their wives or children) owned, controlled or had an interest in at 12/7/71 (1)			Number of Shares (and Average per share Option Price) of Common Stock Subject To Op- tions, Unexercised at January 12, 1972 (6)	
		Number of Shares of Common Stock	Principal Amount of 6% Convert. Subord. Deben- tures due 1972	Principal Amount of Deben- tures	Number of Shares	Average Per Share Option Price
Ernest T. Greeff (Director)	9,131	6,360		383,000		
Robert Le Buhn (Director)	5,531	(2)	(4)			
Roderick A. Munroe (Director)						
Louis R. Perini (7) (Chairman of the Board and Director)	500	400				
Richard A. Reichter (President and Director)	15,000				75,000	\$11.375
Edgar B. Stern Jr. (Director)		69,554	25,000 (5)			
Ronald W. Bolivar (Executive Vice President, Treasurer and Director)				50,000	25,000	\$ 6.562
E. Norman Barrett (Vice President)	1,500					
Charles J. Carr (Vice President)						
Frederick R. Hildebrandt (Vice President)						
John Deneen (Secretary and Assistant Treasurer)						
Charles H. Ziegenbein (Vice President)	200					
Perini, Munroe & Reichter	Not Appl cable (N/A)	210,637 (3)	N/A	N/A	N/A	N/A

FOOTNOTES:

- (1) Source: Management Letter, pp. 24-25.
- (2) Clients and persons who may be deemed affiliates of Eppler & Company, Inc. (of which Robert LeBuhn is a Vice President) owned 285,221 shares of Common Stock. See page 25 of the Management Letter, note (2).
- (3) See Management Letter, p. 25, note (3).
- (4) A client of Eppler & Company owned \$100,000 principal amount of 6% Convertible Subordinated Debentures due 1972 (convertible into 6,693 shares of Common Stock).
- (5) Convertible into 1,673 shares of Common Stock.
- (6) Source: Management Letter, pp. 31-32. The column on page 32 entitled "All Directors and Officers As a Group" indicates that in addition to the options for 100,000 shares of Messrs. Reichter and Bolivar, that options for 19,500 shares were owned by other Directors and Officers, though it is not clear whether said options for 19,500 shares were owned only by Directors and Officers who held office at January 12, 1972.
- (7) Mr. Perini died in April 1972.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :

72 Civ. 1332
T.P.G.

Plaintiffs, :

-against- :

DASA CORPORATION, et al., :

STATEMENT IN RESPONSE
TO REQUEST FOR
ADMISSION OF FACTS

Defendants. :

----- x

Defendant DASA Corporation ("DASA") makes the following statement in response to plaintiffs' "REQUEST FOR ADMISSION OF FACTS, NO. 1" dated August 10, 1973:

Request No. "(1)"

Admits, except that the document entitled "DASA - ANNUAL REPORT - 1971" was not part of the proxy solicitation material sent to DASA's stockholders in connection with DASA's 1972 annual meeting of stockholders.

Request Nos. "(2)" through "(10)",
"(12)" through "(19)", "(21)" and "(22)"

Objects on the ground that the assertions made by said items are irrelevant to this action.

Request Nos. "(23)" through "(26)",
"(28)" and "(29)"

Objects on the ground that the assertions made by the said items are irrelevant to this action. In further response, reference is made to the pleadings and

records of all prior proceedings herein for the details thereof.

Request No. "(31)"

Denies.

Request No. "(32)"

Denies.

Request No. "(33)"

Denies.

Request No. "(34)"

Denies knowledge or information sufficient to form a belief since no new sources were sought.

Request No. "(35)"

Denies knowledge or information sufficient to form a belief as to the assertion made by the said item. DASA's actual knowledge of the ownership of its securities is generally limited to knowledge of record ownership.

Request Nos. "(36)" and "(37)"

Objects to the form of the said items because of the ambiguity and lack of specificity of the introductory phrases.

Requests No. "(38)"

Objects to the said item on the ground that the assertion made by the said item is irrelevant to this action.

Request No. "(39)"

Objects to the form of the said item, except admits that Ernest T. Greeff abstained from voting on the resolution to reduce the debenture conversion price at the meeting of the Board of Directors on February 29, 1972.

Request No. "(40)"

With respect to the ownership of securities by officers and directors of DASA, reference is made to pages 24-25 and 31-32 of DASA's March 9, 1972 letter to Debenture Holders.

Request Nos. "(41)" through "(47)"

Objects to the said items on the ground that the assertions made thereby are irrelevant to this action.

Request No. "(49)"

Admits, and in further response, alleges that no such opinion was required.

Request Nos. "(50)" and "(51)"

Denies, and in further response, refers to DASA's certified financial statements for the fiscal years ended October 31, 1971 and October 31, 1972 for the contents thereof.

Request No. "(52)"

Denies, and in further response, refers to DASA's certified financial statements for the fiscal year ended

October 31, 1971 for the contents thereof.

Request No. "(53)"

Denies, and in further response, refers to DASA's certified financial statements for the fiscal years ended October 31, 1971 and October 31, 1972 for the contents thereof.

Request Nos. "(54)" through "(60)"

Objects to the form of each of the said items, and in further response thereto, refers to the documents described therein for the contents thereof.

Request No. "(61)"

Admits, and in further response, alleges that DASA was not required to mail the proxy statement in respect of its 1972 annual meeting of stockholders and 1971 annual report to the Debenture Holders as a group.

Request No. "(62)"

Admits, and in further response, alleges that DASA was not required to mail the March 9 solicitation letter and April 21 supplement thereto to its shareholders as a group.

Request Nos. "(63)" and "(64)"

Objects to the form of each of the said items, and in further response thereto, refers to the documents described therein for the contents thereof.

Request No. "(65)"

Denies.

Request No. "(66)"

Denies.

Request No. "(67)"

Denies.

Dated: September 26, 1973

Yours, etc.

JACOBS PERSINGER & PARKER

By Richard B. Persinger
A Member of the Firm
Attorneys for Defendant
DASA Corporation
70 Pine Street
New York, New York 10005
Tel. No. (212) 344-1866

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :
Plaintiffs, : 72 Civ. 1332
v. : MEMORANDUM
DASA CORPORATION, et al., :
Defendants. :
-----X

GRISSA, J.

There are three named plaintiffs in this action, which is brought as both a derivative and a class action. Plaintiff Roy E. Brewer is owner of 700 shares of the common stock of defendant DASA Corporation and is also owner of \$25,000 face amount of DASA's 6% convertible subordinated debentures. Plaintiff Simon C. Browning is owner of \$50,000 face amount of the debentures. Plaintiff Browning Debenture Holders' Committee is alleged to be an "unincorporated organization" which represents all the DASA debenture holders. The members of this Committee are plaintiffs Roy E. Brewer and also Simon C. Browning, and Bradley R. Brewer. The latter is the attorney for plaintiffs in this action. It appears that Bradley R. Brewer owns \$52,000 face

amount of the debentures. The named defendants are DASA Corporation; certain present or former officers or directors of DASA; Arthur Andersen & Co, auditors of DASA; and The Bank of New York, trustee under the indenture for the debentures. It appears that only DASA, Arthur Andersen and Bank of New York have been served with process.

Plaintiffs allege that they are suing on behalf of themselves individually and on behalf of DASA derivatively. In addition, three classes are sought to be represented:

- (1) All holders of DASA debentures;
- (2) All DASA shareholders;
- (3) All persons who are holders of both debentures and stock.

The action was commenced on March 30, 1972. Claim 1 in the first amended complaint is against all defendants except Bank of New York, ¹ and alleges that proxy materials sent out by DASA to its shareholders in January 1972 in preparation for the annual meeting of February 22, 1972 were false and misleading in violation of Section 14(a) of the Securities and Exchange Act of 1934 and S.E.C. Rule 14a-9. Claim 2 is against all defendants except Bank of New York, ¹ and alleges that the annual report of DASA for the fiscal year ending

October 31, 1971, which was sent out with the proxy material, was false and misleading in violation of Section 14(a) and the proxy rules.

A Claim 3 is against all defendants and relates to a letter dated March 9, 1972, sent by DASA to the debenture holders, requesting their consent to an amendment of the indenture. In December 1971 DASA had entered into an agreement for the sale of all of DASA's IBM 360 computer systems for a cash consideration of \$2,350,000. In order to consummate this sales transaction it was necessary to obtain an amendment to the indenture consented to by holders of at least two-thirds of the aggregate principal amount of the debentures. Claim 3 alleges that the letter of March 9, 1972 soliciting the consents of the debenture holders was false and misleading in violation of the Exchange Act, the Trust Indenture Act of 1939, and the proxy rules.

Claim 4 alleges that Bank of New York violated its fiduciary obligations to the debenture holders in connection with the transactions involving the computer sale.

Claim 5 alleges that Arthur Andersen is liable under the proxy statute and rules for alleged misrepresentations in connection with the 1970 and 1971 financial statements of DASA.

Plaintiffs request declaratory and injunctive relief as well as damages. Among other things, plaintiffs request a declaration that the 1972 annual meeting of DASA stockholders was illegal and void. It is requested that DASA be directed to prepare and distribute new proxy materials and hold a new 1972 annual meeting.

The Present Motions

Plaintiffs have moved under Rule 56(a) for partial summary judgment as to liability on Claim 1 and Claim 2. In the alternative, they request that "appropriate hearings" be held to determine what facts cannot be contested. In this connection, plaintiffs refer to Rule 56(d).

Defendant DASA has moved for summary judgment dismissing Claim 1 and Claim 2. Defendant Arthur Andersen & Co. joins in this motion.

For the reasons hereafter stated, plaintiffs' motion is denied. The motions of defendants DASA and Arthur Andersen for dismissal of Claims 1 and 2 are granted.

Facts

On or about January 24, 1972 DASA sent to its shareholders a notice of an annual meeting to be held February 29, 1972. The only business specified to be transacted was fixing the number of directors

at 7, electing such 7 directors, and ratifying the selection of Arthur Andersen & Co. as accountants for the fiscal year ending October 31, 1972. Attached to the notice of the annual meeting was a proxy statement. Among other things, the proxy statement described the proposed sale of computer systems, subject to consents of holders of two-thirds of the debentures.

Commencing in early February 1972 plaintiffs started a series of protests regarding a proposed change in the conversion price of the DASA debentures. Plaintiffs also sought to have representation for the debenture holders on the DASA board of directors.

With respect to the conversion price of the debentures, such price was originally set at \$42.42. Apparently for the purpose of inducing debenture holders to consent to the sale of the computer systems, the DASA board agreed to offer the debenture holders a reduction of the conversion price. The debenture holders would be asked to agree to the new conversion price at the same time they were asked to agree to the computer sale.

In connection with the reduction of the conversion price of the debentures, the DASA board

first considered a figure of \$32 and then, shortly before the annual meeting of February 29, 1972, was considering a figure of about \$25.

Counsel for plaintiffs sent to the Securities and Exchange Commission, under date of February 26, 1972, a proposed "proxy statement of Roy E. Brewer" to be sent out to the DASA shareholders in connection with the 1972 annual meeting. In this proposed proxy statement, Mr. Brewer asserted that he intended to vote any proxies given to him in favor of the 7 nominees for directors named in the management proxy statement. Mr. Brewer also stated that he would vote his proxies in favor of the management proposal to ratify the selection of Arthur Andersen & Co., as accountants.

Mr. Brewer's proposed proxy statement contained two proposals in addition to what was in the management proxy statement. Mr. Brewer proposed that the number of DASA directors be increased to 9 in order to have two representatives of debenture holders on the board. Mr. Brewer also proposed that the conversion price of the debentures be set, by resolution at the annual meeting, at an amount between \$6.00 and \$12.00.

Mr. Brewer urged that the DASA shareholders should approve these proposals in favor of the debenture holders, in order to ensure that the debenture holders would not block the sale of the computer systems badly needed to provide working capital to DASA.

The proposed Brewer proxy statement contained a section entitled "Possible Legal Action by the Browning Committee Against the Corporation and Certain of Its Officers and Directors." Under this heading the proposed proxy statement asserted that if no agreement was reached about changing the debenture conversion price and about representation of debenture holders on the board, the Browning Committee intended to commence legal action claiming that the proxy materials for the 1972 annual meeting were false and misleading.

The proposed Brewer proxy statement was too late and was not circulated. The annual meeting of DASA was held as scheduled on February 29, 1972. The business specified in the management proxy statement was transacted -- the 7 directors on the management slate were elected and the selection of Arthur Andersen was ratified.

At the meeting of the DASA board held on February 29, 1972 following the annual meeting of

shareholders, the board voted to propose to the debenture holders a new conversion price of \$21.

Under date of March 9, 1972 DASA sent a letter to the debenture holders soliciting their consent for amendments to the indenture which would permit the sale of the computer systems and would reduce the conversion price of the debentures from \$42.42 to \$21.

On March 30, 1972⁷ this action was commenced. On April 11, 1972 a motion was made to preliminarily enjoin DASA from selling the computer system and fixing the conversion price of the debentures at \$21. On the motion plaintiffs argued that the consent solicitation letter of March 9, 1972 was false and misleading. On May 8, 1972 Judge Motley denied the injunction.

On May 15, 1972 the amendments to the indenture became effective. The sale of the computer systems was consummated on June 1, 1972.

Plaintiffs appealed from Judge Motley's ruling. DASA moved to dismiss the appeal as moot in view of the fact that the transactions sought to be preliminarily enjoined had been carried out. On September 12, 1972 the Court of Appeals granted the motion to dismiss. It appears that at the oral

argument of DASA's motion on August 29, 1972, the Court of Appeals suggested that it might direct the district court to set down the action for immediate trial. Plaintiffs' attorney declined this offer, asserting that extensive discovery was required. *B*

wrong?

In the meantime, on May 19, 1972, plaintiffs filed a motion for approval of class action treatment. A conference regarding this motion was held before me on January 15, 1973. Difficulties regarding class action treatment were discussed, including the problem raised by the position of plaintiffs and plaintiffs' attorney in trying to represent two classes -- shareholders and debenture holders -- with potentially serious conflicting interests. It was agreed at the conference to defer determination of the class action motion until further discovery proceedings had been completed and further pre-trial hearings had been held to narrow or eliminate issues.

Prior to the conference of January 15, 1973 the only discovery conducted in the case consisted of interrogatories served by plaintiffs seeking information and documents. Response to these was completed on January 4, 1973. No discovery has been undertaken following the conference of January 15.

Plaintiffs' motion for summary judgment was filed February 26, 1973. Defendants' motion for summary judgment was filed March 21, 1973. .

Plaintiffs' Motion
Should be Denied

As indicated above, plaintiffs seek partial summary judgment as to liability on Claim 1. The partial summary judgment sought is a declaration that the DASA proxy statement dated January 24, 1972 was false and misleading in violation of the proxy statute and rules. Similarly, plaintiffs seek partial summary judgment on Claim 2 in the form of a declaration that the DASA annual report for 1971 was false and misleading in violation of the proxy statute and rules. In the alternative, plaintiffs request that "appropriate hearings" be held to determine undisputable facts under Rule 56(d).

In connection with the proxy statement, plaintiffs complain that no subtitles or subheadings were used in the 1-1/2 page description under the heading "Certain Transactions and Events," which described sales of DASA stock by certain insiders or their associates; the operating loss of \$1.4 million for fiscal 1971; the proposed sale of computer systems; the need for the consents of debenture holders for the latter sale; and the need for working capital. It is complained

that the potential significance or importance to shareholders of these subjects was not sufficiently described. With respect to the description of the proposed computer sale, it is contended that the proxy statement was overly optimistic in indicating that such sale would satisfy DASA's need for working capital for the foreseeable future. It is claimed that the proxy statement should have, although it did not, describe the intended reduction of conversion price and the potential "dilution" of the equity interest of the present shareholders. Plaintiffs further urge that the proxy statement should have disclosed a conflict of interest on the part of DASA's management which existed in connection with their attempting to represent the interests of both shareholders and debenture holders in determining the new conversion price.

With respect to the annual report for 1971, plaintiffs allege that the "President's Letter" was false and misleading in indicating that during fiscal 1971 the financial position of DASA had improved. Plaintiffs also claim that an asset of \$1.5 million was included in the financial statement, which should not have been included or should have at least been better explained. This asset

related to an acquisition which DASA had made of a company called Cyber-Tronics, Inc. (CTI). According to the footnotes to the 1971 financial statement, DASA had originally determined that the aggregate purchase price of CTI exceeded by about \$19 million the fair value of the assets acquired. According to the footnotes, DASA had later reviewed "this intangible asset" and determined to write it down to \$1.5 million.

^A As one would imagine, plaintiffs' contentions with regard to the falsity of the proxy statement and the 1971 annual report are hotly contested by DASA. In my view, these issues cannot possibly be resolved in plaintiffs' favor on a summary judgment motion. ?

A legal issue has been raised as to whether the alleged falsity of the 1971 annual report constitutes violation of the proxy rules -- specifically Rule 14a-9. See Dillon v. Berg, 326 F. Supp. 1214 (D. Del. 1971). In view of the ruling I have made above regarding the issues of fact, I find it unnecessary to decide this question of law. ?

With regard to plaintiffs' alternative suggestion that the Court should hold hearings to determine specific facts which are beyond contention,

such a procedure would not be useful under the circumstances. As already indicated, I intend to dismiss Claims 1 and 2. Even if I were not to dismiss these claims, the further narrowing of issues would be carried out in normal pre-trial proceedings rather than a further proceeding under Rule 56. A

Claims 1 and 2
Should be Dismissed

The principal argument made by DASA, in its motion for summary judgment dismissing Claims 1 and 2, is that the issues raised by these claims are moot. DASA points out that what plaintiffs are seeking, based upon Claims 1 and 2, is a declaration that, because of the falsity of the proxy material, the 1972 annual meeting should be declared void, and that DASA should be directed to circulate new proxy material for a new 1972 annual meeting. DASA urges that such claims are moot because of the fact that a 1973 annual meeting of DASA has been held, before which new proxy material and a new annual report were circulated to the shareholders.

I agree with DASA's position. It is correct that on or about January 19, 1973 DASA sent to its shareholders a notice of an annual meeting to be held February 27, 1973, and a proxy statement

for that annual meeting. An annual report for fiscal 1972, containing an audited financial statement, was sent with the proxy material.

The 1973 annual meeting has been duly held. Seven directors have been elected -- 4 of whom are the same as those elected in 1972, and 3 of whom are new.

It would be an obvious absurdity to order revision of the 1972 proxy material and the holding of a new 1972 annual meeting. It is unnecessary to labor the point. Suffice it to say that the only actions taken at the 1972 annual meeting, based upon the 1972 proxy materials, were the election of 7 directors for one-year terms and the approval of Arthur Andersen & Co. as auditors for the fiscal year ending October 31, 1972. The directors elected at the 1972 annual meeting have completed their terms and Arthur Andersen & Co. has carried out its audit.

Of course, when the action was originally commenced, on March 30, 1972, the issues raised by Claims 1 and 2 were not moot, in the way they now are. But 18 months have now elapsed, and we must deal with plaintiffs' claims under the circumstances that now exist.

It should be noted that plaintiffs failed to avail themselves of what would have been a relatively simple remedy -- an action brought before the 1972 annual meeting seeking to postpone the holding of that meeting on the ground that the proxy materials were false and misleading. If plaintiffs' claims of falsity with respect to the proxy materials had any merit the remedy in a pre-meeting action would have been less complicated to administer than attempting to undo the meeting and its results after it was held. ?

Plaintiffs had in mind the basic outlines of their claims prior to the meeting, but sought to use them solely as a bargaining point for urging that debenture holders be represented on the board and that the conversion price of the debentures be set in accordance with plaintiffs' wishes.

I should further note that after the action was commenced on March 30, 1972, plaintiffs were given an opportunity for a speedy trial of their case at a time before their claims about the 1972 annual meeting had become completely moot. This was offered to them by the Court of Appeals in late August of 1972. Plaintiffs refused the offer. Not so!

Thus far, in discussing the grounds for dismissal of Claims 1 and 2, I have dealt with these claims as requesting declaratory and injunctive relief -- requests that the 1972 annual meeting and its proxy materials be declared illegal and void and that new proxy materials and a new 1972 annual meeting be ordered.

A further question remains as to whether there is any valid demand for damages based upon Claims 1 and 2 which would prevent summary judgment dismissing such claims.

Plaintiffs' position with respect to damages is cryptic, to say the least. Indeed, in my view, plaintiffs have totally failed to describe, either in their pleading or otherwise, how the alleged falsities in the 1972 proxy materials and in the 1971 annual report caused any injury or damages to DASA, to plaintiffs, or to the classes of shareholders and debenture holders they purport to represent. To be sure, in the prayer for relief at the conclusion of the first amended complaint there are requests for damages. For instance, plaintiffs ask a judgment in favor of plaintiffs and the other debenture holders against DASA and the defendant officers and directors, in the amount of \$6 million "or such other sum as the court may find to have been

caused by the breaches on the part of such defendants of obligations owed to such plaintiffs." A request in similar terms is made for a judgment of damages against the defendant officers and directors in favor of DASA and the DASA shareholders. A request for damages of \$3 million "or such other sum or sums as the court may find to have been caused" is made against defendant Arthur Andersen & Co. on behalf of DASA, the debenture holders, and the shareholders.

But these requests for damages are not tied to any specific claim or claims in the complaint. Nor, as already indicated, is there any statement in Claim 1 or Claim 2 alleging that the asserted wrongdoing caused any specified injury or damages. Moreover, most of the prime targets of the stated damage demands described above -- the officers and directors of DASA -- have not been served with process, although this action has been pending for 18 months.

In addition, in my view, the undisputed facts on the present motions conclusively negate any valid, provable claims for monetary damages under Claims 1 and 2. As stated earlier, the only business transacted at the 1972 annual meeting was the election of 7 directors and the ratification of Arthur Andersen & Co. to conduct the audit for fiscal 1972. At

no time, either before the meeting or since, have plaintiffs indicated that the 7 directors should not have been elected or that Arthur Andersen & Co. should not have been approved as accountants. Indeed, despite the fact that plaintiffs' basic charges of misrepresentation had been framed before the 1972 annual meeting took place, and these charges were articulated in their proposed proxy statement, plaintiffs stated at that time that they were in favor of the election of the 7 persons as directors and in favor of Arthur Andersen & Co. as accountants. Surely there can be no claim for monetary damages based upon actions taken at the 1972 annual meeting and proxy materials issued in connection therewith.

The real "injury" which plaintiffs are seeking to cure is their failure to achieve the low conversion price for the debentures, and possibly debenture representation on the board. These were the two points they were seeking to assert in their proposed proxy statement. Indeed, it is clear that plaintiffs were seeking to paint the financial picture of DASA as being worse than represented in DASA's management proxy material in order to persuade the shareholders of the crucial importance of the sale of the computer systems, so that in turn the DASA

shareholders would make the additional concessions desired by plaintiffs (lower conversion price and board representation). What has actually transpired is that the computer sale has been consummated, but plaintiffs did not succeed in obtaining board representation or the low conversion price for the debentures sought by them.

I think it is certain that there is no way, short of the most fanciful speculation, to trace the above grievance or injury back to alleged falsity in the proxy material and assign a dollar figure to such injury.

My statements in this memorandum are not intended to indicate any view about plaintiffs' contentions regarding the March 9, 1972 solicitation letter to the debenture holders, or other matters referred to in the remaining claims in the first amended complaint.

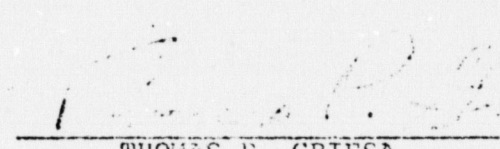
Conclusion

Plaintiffs' motion for partial summary judgment and other relief under F.R.C.P. 56 with respect to Claims 1 and 2 is denied.

The motions of defendants DASA and Arthur Anderson & Co. for summary judgment on Claims 1 and 2 are granted and said claims are dismissed.

So ordered.

Dated: New York, New York
September 27, 1973



THOMAS F. GRIESA
U.S.D.J.

FOOTNOTE

1. The first amended complaint directs Claims 1 and 2 against all defendants, including Bank of New York. However, a stipulation dated April 29, 1978 specifies that no relief is sought against Bank of New York under Claims 1 and 2.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.
-----X

:
: Civil Action

:
: 72 CIV. 1332

:
: R.O.O.

:
: NOTICE OF MOTION

Moving Party:

Plaintiffs

Return Date, Time and

Place of Hearing:

Friday, ^{July 26} March 29, 1974

2:15 p.m.

Room 519

U.S. Courthouse

Foley Square

New York, N.Y.

Or such other date, time, or
place as the Court may direct.

Relief Requested:

(A) Reconsideration and re-
argument by the court of the
respective motions by plain-
tiffs and defendant DASA for
summary judgment as to Claims
1 and 2 set forth in the
complaint; or

(B) An order pursuant to
Rule 54(b), F.R.C.P., direct-
ing the entry of final judg-
ment as to Claim 1 and Claim 2;
or

(C) An order pursuant to 28 U.S.C. §1292(b) authorizing interlocutory appeal by plaintiffs from the order herein by Judge Griesa dated September 27, 1973, upon the ground that the order involves controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of this litigation. Memorandum dated March 4, 1974.

Supporting Papers:

Dated: New York, N.Y.
March 13, 1974

BREWER & SOEIRO
Attorneys for Plaintiffs

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#40978
FILED
U.S. DISTRICT COURT
JUL 16 9 38 AM '74
S.D. OF N.Y.
72 Civ. 1332

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.

MEMORANDUM, DECISION AND ORDER

The plaintiffs have made four motions. First they move for reconsideration of the motion earlier decided by Judge Griesa granting summary judgment to the defendants dismissing claims 1 and 2 of the amended complaint. Second, plaintiffs move for an order pursuant to Rule 54(b) of the Fed. R. Civ. P. directing the entry of final judgment as to said claims 1 and 2. Third, in the alternative they move for an order pursuant to 28 U.S.C. §1292(b) authorizing an interlocutory appeal from the said order of Judge Griesa. Fourth, plaintiffs move for class action determination pursuant to Rule 23, Fed. R. Civ.

P.

Plaintiffs' motion for reconsideration of the decision of Judge Griesa is denied. Judge Griesa's opinion and order was filed on October 1, 1973. The notice of motion for reconsideration and reargument is dated March 13, 1974, some 5 1/2 months after the decision. The motion for reargument, not having been made within ten days of the filing of Judge Griesa's decision and order is barred by Rule 9(m) of the General Rules of this Court.

Since the defendant DASA Corporation does not object to the entry of final judgment as to claims 1 and 2 pursuant to Rule 54(b), I grant plaintiffs' motion to certify the order of September 27, 1973 of Judge Griesa as a final order pursuant to that Rule. However, I deny plaintiffs' motion for an order pursuant to 28 U.S.C. §1292(b) authorizing an interlocutory appeal. It is well established that an interlocutory appeal should not be permitted unless the order under attack involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation. Gottesman v. General Motors Corp., 268 F.2d 194 (2d Cir. 1959). I find neither of these two requirements are met in this case.

I deny plaintiffs' motion for class action status. Plaintiffs seek to represent two classes as follows: a) all debenture holders of DASA; and b) all stockholders who owned shares of DASA common stock between January 1, 1972 and February 29, 1972. Since claims 1 and 2 of the amended complaint have been dismissed, plaintiffs' motion to represent the stockholders is denied as moot. I further deny plaintiffs' motion to represent the debenture holders of DASA Corporation since the evidence shows that those same debenture holders have already rejected the relief the plaintiffs demand.

As I see it, this litigation involves an attempt by the plaintiffs, who are debenture holders of DASA Corporation, to force the management of DASA Corporation, to lower the proposed conversion ratio of DASA debentures from \$21 to between \$6.00 and \$12.00.* This conversion price of the debentures was related to the sale of assets by DASA to Datatron Corp. in 1972. In order to effectuate the transfer of these assets, it was necessary for DASA to obtain the consent of two thirds of the debenture holders before any transfer of assets could take place, which consent

*This same observation has already been made by two other judges of this Court who have had occasion to rule on aspects of this case.

was obtained by DASA before this litigation was commenced.

It is of critical significance however, that after the commencement of this litigation, DASA advised all debenture holders by letter that they could revoke the consent they had heretofore given in the light of the litigation. In response to this letter, the holders of only .3% of the principal amount of debentures elected to withdraw their previously filed consents. Holders of 71.3% of the principal amount of debentures continued their consent to the management's proposed reduction of the conversion price to \$21.00. Thus the debenture holders were given an early opportunity to declare for or against the position the plaintiffs now assert here, and chose overwhelmingly to reject it. In view of the above, there is no class for the plaintiffs to represent. See Schy v. Susquehanna Corporation, 419 F.2d 1112 (7th Cir. 1970), cert. denied, 400 U.S. 826; Giordano v. Radio Corporation of America, 183 F.2d 558 (3d Cir. 1950); Schulman v. Ritzenberg, 47 F.R.D. 202 (D.C.D.C. 1969); Hess v. Anderson, Clayton & Co., 20 F.R.D. 466 (S.D. Cal. 1957); duPont v. Perot, 59 F.R.D. 404 (S.D.N.Y. 1973).

There are other apparently meritorious reasons asserted for not granting plaintiffs class representation, but I need not reach them.

The motion of the Bank of New York is denied in my discretion.

The Court's determination on each of the foregoing motions is so ordered.

U. S. D. J.

July 11, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Plaintiffs,

-against-

DASA CORPORATION, et al.,

Defendants.

:

:

:

:

:

:

-----X

Moving Party:

Return Date, Time and

Place of Hearing:

Plaintiffs

Friday, ~~July 26~~, 1974

2:15 p.m.

Room 1306

U.S. Courthouse

Foley Square

New York, N.Y.

Or such other date, time or
place as the Court may direct.

Relief Requested:

(A) An order directing that
depositions taken on behalf
of the plaintiff, or any other
party, may be taken through the
use of two simultaneous tape

recorders making duplicate original recordings of the proceedings, with (i) one such original to be kept by counsel for the plaintiff and the other to be kept by counsel for the defendant primarily involved in the proceedings and (ii) a typed transcript of the deposition to be sent by counsel taking it to all counsel in the action.

(b) A pretrial order directing that counsel for DASA submit and serve proposed findings of fact with respect to Claim 3 within 15 days after the order; that counsel for plaintiffs and DASA confer during a period of 15 days after service of DASA's proposed findings for the purpose of reaching agreement by stipulation on all facts not reasonably in dispute with respect to Claim 3; and that a pretrial conference with the court be scheduled for a date approximately 45 days after the court's order at which time the court will consider the results

of the parties' negotiations concerning stipulated facts (together with the opposing proposed findings of fact and other relevant documents in the record) and thereafter issue a pretrial order determining facts not reasonably in dispute and issues of fact and credibility as to which it will be necessary for the court to hear evidence at trial.

Supporting Papers:

Affidavit sworn to July 12, 1974.

Dated: New York, N.Y.
July 12, 1974.

BREWER & SOEIRO
Attorneys for Plaintiffs

BY

Bradley R. Brewer

Bradley R. Brewer
A Member of the Firm
292 Madison Avenue
New York, N.Y. 10017
(212) 679-8091

TO: JACOBS PERSINGER & PARKER
Attorneys for Defendant
DASA Corporation
70 Pine Street
New York, N.Y. 10005

SULLIVAN & CROMWELL
Attorneys for Defendant
The Bank of New York
48 Wall Street
New York, N.Y. 10005

*amended notice
mailed 7/16/74
to all depts covered
Bradley R. Brewer
attorney for Defendants*

BREED, ABBOTT & MORGAN
Attorneys for Defendant
Arthur Andersen & Co.
One Chase Manhattan Plaza
New York, N.Y. 10005

A

A UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROWNING DEBENTURE HOLDERS'
COMMITTEE, et al.,

Plaintiffs, :

72 Civ. 1332

-against-

: R.O.O.

DASA CORPORATION, et al.,

: AFFIDAVIT

Defendants. :
-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BRADLEY R. BREWER, being duly sworn, deposes and says:

(1) Affiant and Purpose of Affidavit. (a) I am a member of the firm of Brewer & Soeiro, counsel for the plaintiffs in this action. I have served as plaintiffs' attorney herein since this action was commenced. I am fully familiar with the facts and circumstances involved in it.

(b) I submit this affidavit in support of plaintiffs' motion for the relief described in the foregoing notice of motion. A

(2) The motion for permission to conduct plaintiffs' depositions through the use of tape recordings and written transcripts in the usual form made therefrom.

(a) Prior successful experience with the proposed procedure in other cases, including an action recently tried in this court. (i) The proposed deposition procedure is described in the foregoing notice of motion. It involves elimination of the use of the usual "court reporter" and the use, instead, of two simultaneous tape recordings recording the questions and answers. At the end of each deposition session, one set of the tapes is given to counsel for the witness and one set is kept by plaintiffs' counsel. From the latter tape, a transcription in the usual form is made and submitted to counsel for all defendants. If any defense counsel wish to compare the transcript with the "defense copy" of the original tape (or with that held by plaintiffs' counsel), they are free to do so at their leisure.

(ii) Plaintiffs' counsel has had experience in the past with this procedure for recording depositions. It has found opposing counsel unanimously willing to use this method, and has experienced no difficulties or disagreements of any kind, resulting from its use. So far, no counsel for any party has felt the need to compare the transcript with either of the two available tape recordings. In one deposition, plaintiffs' counsel provided two tape recorders and defense counsel chose to provide a third. There was no disagreement with the transcript made from one of the plaintiffs' tapes. One action recently tried before Judge Lasker of this court in which the proposed procedure was used successfully

and without incident was Automatic Specialties, Inc. v. Piano, 72 Civ. 785 (M.E.L.).

(iii) We respectfully submit that the proposed procedure is effective, accurate, reasonable, and fair to all parties and their counsel. It offers two main advantages. First, there is the advantage of speed: a transcript can be prepared promptly in counsel's offices, using ordinary transcription equipment and normal secretarial help. As a result, an extremely accurate transcript can be available very quickly without resort to the extremely expensive per-page charges normally made by court stenographers for "rush" or "overnight" transcripts. The second advantage is cost. A perfectly acceptable transcript is available using the proposed procedure at roughly one-fifth of the normal cost of deposition transcripts, even at normal rates.

(b) In the circumstances, we respectfully submit that the requested permission is within the power of the court to grant, that the request is reasonable and well-justified, that no serious or significant burden or risk would be imposed upon any party (since counsel for any party can request that a court stenographer be present at his expense, if he wishes to have one), and that the motion in this respect should be granted.

(3) The motion for a pretrial order setting a pretrial procedure and schedule for the early determination of undisputed facts.

(a) Procedural Background. (i) As the court has

been advised in documents filed by plaintiffs' counsel in May of this year in connection with cross-motions argued before the court on 4/19/74 [see, plaintiffs' rebuttal memo. dated 4/16/74, pp. 22-24],* plaintiffs' counsel proposed informally to Judge Griesa early in 1973 and again to this court in April of 1974 the proposed procedure for narrowing the factual issues involved in this action which has now been made the subject of the present formal motion. That proposed procedure is regularly used by Judge Pollack of this court with what he considers highly effective and satisfactory results. We have been told by counsel involved with cases before Judge Pollack in which resort was made to this procedure that they, too, found the device very helpful and effective in narrowing the factual issues in a potentially complex case at an early point and in enabling counsel for both sides to focus their efforts during discovery only on genuinely triable issues of fact and credibility. For Judge Pollack's views, see: 50 F.R.D. 451 and New York Law Journal for 4/2/72, page 1.

(ii) Rule 9(g) statements with respect to Claims 1 and 2 were exchanged between counsel for plaintiffs and DASA in connection with the cross-motions under Rule 56 decided by Judge Griesa in September of 1973. Plaintiffs' proposed findings of fact with respect to Claim 4 were served by plaintiffs' counsel on all opposing counsel in open court on 4/19/74, at which time plaintiff counsel requested that defense counsel (and counsel for DASA in particular) make good on their protested desire for early trial and decision.

*See also, letter from plaintiffs' counsel to the court dated 5/2/74, pp. 1-3.

this action on its merits by cooperating voluntarily with the proposed factual issue narrowing procedure recommended by Judge Pollack, for many years a leading defense attorney in corporate and SEC law litigation. Counsel for DASA and for the bank have refused to cooperate with the proposed procedure except upon order from the court. That position on their part has made the present motion necessary. We respectfully submit that the interests of justice as they are involved in the procedural aspects of this case require that the present motion be granted as requested.

Bradley R. Brewer

Bradley R. Brewer

Sworn to before me this

th
17 day of July, 1974.
Samuel Kalmanash
SAMUEL KALMANASH
Notary Public, State of New York
No. 60-7144300
Qualified in Westchester County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :
 : 72 CIV. 1332
Plaintiffs, :
 : R.O.O.
 :
-against- :
 :
 :
DASA CORPORATION, et al., :
 :
Defendants. :
-----X

PLAINTIFFS' PROPOSED FINDINGS
OF FACT WITH RESPECT TO CLAIM 3.*

A - Dasa Corp. - 1972 Proxy Materials

*(1) On or about January 24, 1972, defendant DASA Corporation ("DASA") sent or caused to be sent to holders of record of its Common Stock (the "stockholders") as of the close of business on January 14, 1972, in connection with DASA's 1972 Annual Meeting of Stockholders each of the following documents (hereinafter sometimes referred-to collectively as the "proxy materials," true copies of which have been heretofore filed with the court):

- (a) a Notice of Annual Meeting of Stockholders dated January 24, 1972, and subscribed "By Order of the Board of Directors, Alma M. Smith, Assistant Clerk" (the "notice of annual meeting");
- (b) a document entitled "PROXY STATEMENT - DASA CORPORATION - ANNUAL MEETING - February 29, 1972,"

* Proposed findings as to which plaintiffs maintain that the pertinent facts exist for purposes of this action without substantial controversy or reasonable grounds therefor are preceded by an asterisk (*).

dated January 24, 1972, and signed "By Order of the Board of Directors, RICHARD A. REICHTER, President" (the "proxy statement");

(c) a form of proxy to be signed by the stockholder (the "proxy"); and

(d) a document entitled, "DASA - ANNUAL REPORT - 1971" (the "1971 annual report").

*(2) The notice of annual meeting and the proxy statement were drafted for DASA by its General Counsel, Jacobs, Persinger and Parker ("JP&P"), who consulted from time-to-time in the drafting thereof with various other persons, including officers of DASA.

*(3) Within JP&P, work on the proxy statement was begun by Martin S. Wagner ("Wagner"), an attorney associated with JP&P, in November of 1971. Wagner devoted more time than any other attorney of JP&P to drafting of the proxy statement and did most of the work involved in such drafting.

*(4) Under date of 1/27/72, Wagner wrote to Martin Lewis, Esq., of Investors Diversified Services, Inc., in Minneapolis, Minnesota enclosing final proxy materials for DASA's 1972 annual meeting.

(5) On 2/10/72, the law firm of Maull & Soeiro ("M&S," then counsel for the parties who later became the plaintiffs herein) sent a letter bearing that date to the Corporate Trust Department of The Bank of New York (the "bank"), a defendant herein, with carbon copies to DASA, JP&P and the Securities and Exchange Commission (the "SEC" or the "Commission"). A true copy of that letter is attached hereto. On or about 2/16/72,

* The exhibits here and hereafter referred-to were previously served and filed with the court as exhibits to plaintiffs' Rule 9(g) statement.

M&S sent a revision of its letter dated 2/10/72 to the same recipients.

*(6) On 2/16/72 and 2/23/72, the law firm of Olin, Murphy, Manuel & Lynch ("OMM&L") sent a letter to M&S bearing that date, copies of which are attached hereto.

B - Proposed Proxy Statement of REB to DASA Stockholders.

*(7) On 2/26/72, M&S sent a letter bearing that date to the SEC, enclosing for review and comments by the Commission staff a proposed "Proxy Statement of Roy E. Brewer" ("REB") for distribution to the stockholders of DASA in connection with its 1972 annual meeting. (Copies attached.) On that date, a copy of that letter and the REB proxy statement were delivered to JP&P and to DASA.

*(8) A copy of the REB proxy statement was delivered personally to every member of DASA's board of directors prior to the DASA 1972 annual meeting held on 2/29/72.

*(9) The contents of the REB proxy statement were referred-to and discussed by Bradley R. Brewer, an attorney for the plaintiffs herein, during a presentation made by him to the organization meeting of DASA's board following the 1972 annual meeting. During that meeting, all members of the board present indicated to Mr. Brewer that they had received a copy of the REB proxy statement prior to the annual meeting.

*(10) On 3/7/72, M&S sent a letter to the SEC in the form attached hereto setting forth the "factual background" of the REB proxy statement.

C - The Dasa March 9 Letter to Debenture Holders.

*(11) On or about 3/9/72, DASA sent a letter bearing that date to the holders of its 6% Convertible Subordinated Debentures due July 1, 1987 (the "March 9 letter" or the

"solicitation letter"; the "debenture holders"; and the "debentures," respectively). A true copy thereof has been filed previously with the court.

*(12) On 3/9/72, M&S sent a letter to the SEC enclosing a proposed form of proxy and proxy statement of the Browning Debenture Holders' Committee "with respect to the proposed Meeting of holders of" the debentures. (Copy of cover letter attached).

*(13) On 3/16/72, M&S mailed to DASA by certified mail a letter demanding that a statement in the form attached be included in DASA's proxy statement to the debenture holders.

*(14) When M&S sent its letters dated 3/9/72 and 3/16/72, it was not aware that the DASA March 9 letter had been sent to the debenture holders.

D - Proposed Browning Committee Proxy Statement to Debenture Holders.

*(15) On 3/18/72, M&S sent to the SEC a revision bearing that date of the proposed Browning Committee proxy statement for the debenture holders. (Copy of letter and enclosure attached.)

*(16) On 3/19/72, M&S sent to DASA a letter demanding a prompt response to its letter dated 3/16/72 and stating that a copy of the March 9 solicitation letter to the debenture holders was not sent to Bradley R. Brewer, of counsel to M&S, despite the fact that he was listed twice on the records of DASA as a holder of the debentures. (Copy attached.)

*(17) On 3/17/72, OMM&L sent a letter bearing that date to M&S. (Copy attached.)

*(18) On 3/21/72, M&S sent a letter bearing that date to the bank. (Copy attached.)

*(19) On 3/23/72, M&S sent a letter bearing that date to the bank. (Copy attached.)

*(20) On or about 4/21/72, DASA mailed or caused to be mailed to the debenture holders a letter supplementing the March 9 letter. (Copy filed previously with the court.)

*(21) On 5/1/72, M&S sent to the SEC a revision of the Browning Committee's proposed proxy statement to debenture holders made in light of written comments received from the Commission in a letter of comments dated 3/23/72.

*(22) On 5/11/72, M&S sent a letter to counsel for the bank bearing that date. (Copy attached.)

E - The Present Action.

*(23) The present action was commenced on 3/30/72. At that time, plaintiffs made a motion for a preliminary injunction against the proposed sale by DASA to Datatron Corporation of certain IBM 360 computer systems, peripheral equipment and leases thereon and a related amendment to the trust indenture covering the debentures upon the ground that the "consents" solicited and obtained through use of the March 9 letter should not, in law and in equity, be relied-upon as valid until appropriate action was taken to correct certain material defects of disclosure which the plaintiffs alleged were contained in that letter in violation of Section 14(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") and the so-called "proxy rules" issued by the SEC thereunder. A request for a temporary restraining order was dropped pursuant to an agreement reached between plaintiffs and DASA at a hearing on plaintiffs' request for such relief under which DASA agreed, through JP&P, not to sell as much as two per cent of the computers in question pending determination of plaintiffs' motion for a temporary

injunction. (See letter from JP&P to M&S dated 3/31/72, copy attached.)

*(24) On 5/8/72, this court, per C.B. Motley, D.J., filed an opinion bearing that date denying plaintiffs' motion for a preliminary injunction.

*(25) On 5/8/72, when notice of Judge Motley's decision was received by counsel for the plaintiffs, attorneys from M&S and plaintiff Simms C. Browning were in the SEC's offices in Washington, D.C., attempting to work out with the SEC a form of proxy statement acceptable to the SEC for submission by the Browning Committee to the Debenture holders.

*(26) Judge Motley's decision effectively mooted the Browning Committee's efforts to clear through the SEC and distribute to the debenture holders a counter proxy statement presenting its views as to the merits and lack thereof of the proposed sale of computers.

*(27) The indenture was amended on 5/15/72 and the equipment and leases were sold on 6/1/72.

*(28) Plaintiffs appealed the decision of Judge Motley.

*(29) After the sale was completed, DASA moved, on 8/17/72, in the Court of Appeals to dismiss the appeal on the ground that it was moot. Plaintiffs opposed the motion on the ground that the Supreme Court had decided and held in Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970), that the completion of a corporate transaction such as this does not end the case or the interest therein by the courts because other relief than prevention of the transaction may be appropriate in the circumstances after the fact, if violations of the federal proxy laws in fact took place. The Court of Appeals granted DASA's motion and dismissed the appeal in an order dated 9/12/72.

F - Disposition by DASA of the Proceeds of the Sale of Computers.

*(30) On or about 5/12/72, Datatron Corporation sent a letter bearing that date to "All Creditors of DASA CORPORATION" a true copy of which is attached hereto.

*(31) The proceeds received by DASA from the sale of computers to Datatron were applied as set forth in Datatron's letter dated 5/12/72.

*(32) Promptly after the sale of computers to Datatron, the following sums were paid to the parties indicated from the \$2,350,000 (plus or minus adjustments) paid by Datatron at the closing of the sale:

To	IBM in payment of a purchase-money mortgage loan	\$156,632.49
To	First National City Bank of New York City in payment of loans made pursuant to a line of credit originally issued to Cyber-Tronics, Inc. prior to its acquisition by DASA	625,187.44
To	New England Merchants' National Bank of Boston in payment of loans made pursuant to a line of credit secured by certain accounts receivable of DASA (approximate)	794,634.85

*(33) The line of credit to DASA from the New England Merchants' Bank of Boston was not maintained or renewed after payment in full of the amounts due thereunder after the closing of the sale to Datatron.

*(34) No new sources of loans for working capital funds were available to DASA at any time within four months after the sale to Datatron which were not previously available.

G - Miscellaneous Facts.

*(35) At all times relevant to this action, three members of the plaintiff Browning Committee owned, collectively \$127,000 face amount of the debentures.

*(36) At all times relevant to this action, Roy E. Brewer owned of record 700 shares of DASA's Common stock

*(37) At all times relevant to this action, Roy E. Brewer was the owner of record of both debentures and Common stock of DASA.

*(38) Edgar B. Stern, Jr., resigned from DASA's board of directors after its 1972 annual meeting and before its 1973 annual meeting.

*(39) Only one director of DASA disqualified himself from participation in the decision and vote of the board made at the 1972 organization meeting on 2/29/72 to fix the proposed new debenture conversion price at \$21. That director was Ernest T. Greeff.

*(40) Officers and directors of DASA held the securities of DASA indicated on the schedule attached hereto and headed "Dasa Management's 'Equity Holdings'" on the dates indicated on that schedule. (Copy attached.)

*(41) In connection with the proposed sale of computers to Datatron and the proposed and related solicitation of consents from the debenture holders, DASA's management and/or its board of directors first fixed the proposed new conversion price at \$32. That figure was incorporated in the first draft of the first solicitation letter when that draft was sent to the SEC for review as a proxy statement.

*(42) After the proposed conversion price was fixed at \$32 and before 2/29/72, an offer was made to plaintiffs' counsel of a lower such price of \$25 on behalf of DASA's management.

*(43) At the meeting of DASA's board on 2/29/72 following the annual meeting and after a presentation was made to that board meeting by counsel for the plaintiffs in which he (i) referred to the proposed proxy statement to stockholders

of Roy E. Brewer and the points made therein and (ii) argued that it would be grossly unfair to the debenture holders and a violation of a legal or equitable duty of fair treatment owed by the board to the debenture holders for the new conversion price to be fixed at either \$32 or \$25, the board voted to reduce the proposed conversion price to \$21, the price subsequently incorporated in the March 9 solicitation letter.

*(44) Both prior to and at the board meeting on 2/29/72, plaintiffs had pointed out to DASA's management, including its board, (a) that because the board was elected solely by the shareholders and the interests of the shareholders and those of the debenture holders were in conflict on the matter of an appropriate and equitable new conversion price, an unavoidable shadow of doubt, bias, and possible illegality or invalidity would be cast upon any decision made by the board on the conversion price question unless careful measures were taken in determining the price which would demonstrate objectivity, fairness and sound financial analysis in its determination; (b) that to alleviate such doubt and questions the method used in deciding upon the price selected and the rationale for that price should be publicly announced; (c) that an independent expert opinion should be obtained by DASA as the basis for determining the new conversion price; and (d) that resort to such expert counsel is a procedure commonly used in the financial community in a difficult situation such as this.

*(45) DASA management rejected a proposal presented by plaintiffs prior to the 1972 annual meeting that the board should obtain an opinion from an independent and unbiased financial analyst as to what price range the proposed new conversion price should fall within.

* (46) Plaintiffs stated to DASA management prior to and on 2/29/72 (i) that they believed a new conversion price of \$32, or \$25, or any figure over \$12 would be arbitrary, irrational, unfair to the debenture holders and a violation of management's duty of fairness and equity to the debenture holders and (ii) that they intended to commence suit to determine the rights of the debenture holders if fair, open and reasonable procedures satisfactory to them were not used in fixing the new conversion price.

* (47) DASA management rejected a proposal made by the plaintiffs prior to and at the 1972 annual meeting that such meeting be adjourned for a period of sixty days (or some other reasonable period) so that the shareholders could be given notice of the problem that had arisen over the proposed new conversion price and the likelihood of litigation if resort was not made to an independent expert opinion on the new conversion price as proposed by the plaintiffs.

* (48) At its organization meeting on 2/29/72, DASA's board fixed the proposed new conversion price at \$21.

* (49) DASA management did not obtain an independent, expert opinion from a qualified financial analyst in connection with selection of a proposed new conversion price at any time prior to 2/29/72. No such opinion was obtained by DASA at any time prior to closing of the sale to Datatron.

(50) Between 10/31/70 and 10/31/72, the financial condition of DASA had not significantly improved. In fact, that condition had significantly deteriorated or declined during that period of time.

(51) Between 10/31/70 and 10/31/72, the general financial condition of DASA had declined to a point where insolvency and bankruptcy were possibilities that had to be seriously

considered by its management. Such possibilities were in fact seriously considered by its management.

*(52) In the financial statements included in its 1971 annual report, DASA included, in stating its asset position an asset valued at \$1.5 million which DASA's firm of auditors and certified accountants had refused to certify as existing under generally accepted principles of public accounting.

(53) The sale of computers to Datatron did not in fact eliminate DASA's need for sources of working capital from outside the corporation (a) for a period of three months after closing of the sale, (b) for a period of six months thereafter, (c) for a period of nine months thereafter, or (d) for a period of one year thereafter. DASA's need for such sources of outside working capital funds has not been satisfied or eliminated to date.

*(54) Nowhere in the proxy statement did DASA management state that a proposed new and reduced debenture conversion price would be offered to the debenture holders in connection with the proposed sale of computers to Datatron.

*(55) Nowhere in its text does the proxy statement state that a substantial reduction of the debenture conversion price in connection with the proposed sale of computers would have the effect of creating substantial potential dilution of the equity interest of the stockholders prior to such reduction, in favor of the debenture holders.

*(56) Nowhere in its text does the proxy statement provide any reasons or explanation for the stockholders as to why the imposition of such substantial potential dilution would or would not be in the best interests of (i) the stockholders as a group or (ii) the corporation as a whole.

*(57) The form of proxy distributed in connection with DASA's 1972 annual meeting did not provide the voting shareholders with an opportunity to approve or disapprove the proposed sale of computers.

*(58) Nowhere in its text does the proxy statement indicate the existence of a possible conflict of interest by any officer or director of DASA who might participate in a decision to reduce the debenture conversion price in connection with the proposed sale of computers.

*(59) Nowhere in its text does the proxy statement set forth or indicate (a) the nature, extent, immediacy and seriousness of DASA's need at that time for additional working capital funds, (b) the availability (or absence thereof) of sources for such funds from outside the corporation, (c) the importance to DASA of its acquiring additional working capital through the proposed sale of computers, (d) the alternatives, if any, available to DASA for acquiring such funds if the proposed sale of computers should fall through, or (e) the possible or probable consequences for DASA if that sale should fall through.

*(60) Nowhere in its text does the proxy statement explain or indicate what was meant by the term "forseeable future" used on page 7.

*(61) Neither the proxy statement nor the 1971 annual report was mailed to the debenture holders as a group.

*(62) Neither the March 9 solicitation letter nor the April 21 supplement thereto was mailed to the shareholders as a group.

*(63) Nowhere in its text did the March 9 letter explain that a new conversion price of \$21 would give each debenture an arithmetic "conversion value" of less than \$150, or less than half of its then current market value.

*(64) Nowhere in its text did the proxy statement indicate that the proposed computer sale transaction would involve potential dilution of the shareholders' equity interest through a reduction in the conversion price of DASA's convertible preferred stock, which price was later reduced by approximately one-third, from \$19.92 to \$13.00.

*(65) Of the approximately \$2.35 million in further cash consideration paid by Datatron for the computers purchased by it, approximately \$2.214 million was paid out by DASA promptly after closing of the sale to holders of "senior debt."

*(66) The computer assets sold to Datatron yielded to DASA a net, annual, positive, cash contribution to working capital of between \$50,000 and \$100,000 after allocation of those assets of reasonable expenses.

*(67) The computer assets sold to Datatron constituted the only remaining, readily saleable and substantial bundle of assets which DASA could sell in order to raise necessary working capital at that time.

(68) In selecting a new debenture conversion price to be offered to the debenture holders in the solicitation letter dated March 9, 1972, DASA management (i.e., those officers and directors who actively participated in choosing a proposed new price and in presenting it to the entire board for approval) (i) regarded its primary or exclusive fiduciary duty or obligation to be to the Common shareholders and (ii) considered itself to have no significant or substantial fiduciary duty or obligation to consider and take action reasonably calculated to protect the interests of the debenture holders as a group.

(69) The facts set forth in (68) above with respect to the approach or attitude taken by DASA's management in selecting the proposed new conversion price were not disclosed in

the March 9 letter or in any other management communication with the debenture holders.

*(70) No facts of any kind were reported by DASA to the debenture holders concerning what DASA management considered or believed its respective fiduciary duties to the shareholders and debenture holders to be in connection with selecting the proposed new conversion price offered in the March 9 letter.

*(71) No facts of any kind were reported by DASA to the debenture holders concerning (i) the reasoning or rationale that led to selection of \$21.00 as the proposed new conversion price or (ii) whether or how the respective competing and conflicting interests of the shareholders and debenture holders had been considered and balanced in connection with selecting the \$21.00 figure.

*(72) Neither DASA's March 9 letter nor the April 21 supplement thereto contained a statement explaining, in reasonably clear and comprehensible terms, either (i) the existence of a possible financial conflict of interest on the part of each officer and director of DASA who owned DASA Common Stock or an option, warrant or other interest (other than a debenture) and who participated in the corporation's decision fixing the proposed new conversion price at \$21.00, or (ii) the reason for the existence of such a financial conflict of interest, i.e., that any substantial reduction of the conversion price would necessarily result in a corresponding dilution of the equity ownership position of the present holders of Common Stock (or interests therein other than debentures).

*(73) Neither the March 9 letter nor the April 21 supplement disclosed whether or not (i) DASA had obtained (as Roy Brewer had proposed to its board) an expert and disinterested opinion as to the proper or reasonable range of prices within

which the proposed new conversion price should fall as a matter of sound corporate financial analysis or (ii) the obtaining of such an opinion had been considered by DASA and rejected, or (iii) if such action had been rejected, the reasons for that decision.

*(74) The DASA debenture holders were not informed (by DASA, the bank, or anyone else) that the bank, as trustee for the debenture holders under the indenture, did not make any in-put to DASA management or take any other action in connection with selection of the proposed new conversion price calculated to advocate or protect the financial interests of the debenture holders as a group or to place the debenture holders on notice that a problem existed in that connection with respect to which it might be advisable for them to take action on their own (either individually or collectively) to protect their interests.

*(75) The debenture holders were not informed (by DASA, the bank or anyone else) of the existence of the Browning Committee or of its efforts on behalf of its members and the other debenture holders since the beginning of February 1972.

(76) The "consent form" sent by DASA to the debenture holders with the March 9 letter was seriously deceptive in that (i) it did not inform them or indicate in any way to them until the last paragraph (on pages 34 and 35) that if the form were duly submitted it would be revocable and (ii) the revocability of the consent requested was not emphasized in a manner similar to emphasis normally given in proxies and reflected in DASA's 1972 Notice of Annual Meeting (sent to shareholders), where it stated conspicuously, on page 1, and in solid capital letters that "THE PROXY IS REVOCABLE."

(77) Neither the March 9 letter nor the April 21 supplement thereto stated or disclosed in clear language readily comprehensible to an unsophisticated reader that (I) if the requisite percentage of the Debenture holders should consent to amendment of Section 6.05 of the Indenture, as requested by DASA management; and (II) if for any reason the Agreement with Datatron Corporation ("Datatron Agreement") should fail to be consummated in whole under the terms thereof as described in the solicitation letter; then (III) the Debenture holders would have conferred carte blanche consent to DASA management to dispose of the Equipment and Leases (as defined in the solicitation letter) as they saw fit, in their unrestricted and uncontrolled discretion. The solicitation letter thus failed to include a statement explaining that, if for any reason the Datatron Agreement was not so consummated, then DASA management would be free of the restraint contained in Section 6.05 of the Indenture, for the protection of the Debenture holders) against disposition of the Equipment and Leases, and would be free to dispose of such Equipment and Leases under terms less beneficial than the terms described in the present solicitation letter. In other words, DASA's management would be free to continue to hold such Equipment and Leases and to sell or otherwise dispose of them free from any restraint under the Indenture and free of any requirement to obtain further Debenture holder consent to a later and different proposed sale of those assets regardless of the terms of such later proposed transaction and regardless of the financial condition of DASA at such time.

(78) For purposes of selecting the proposed new conversion price stated in the March 9 letter, DASA's management regarded itself as representing and protecting the interests

of only the common shareholders at the expense of the financial best interests of the debenture holders. That fact was not disclosed to the debenture holders by either DASA or the trustee bank.

(79) In selecting the proposed new conversion price, DASA's management made no attempt to offer a fair and equitable price to the debenture holders. That fact was not disclosed to the debenture holders by DASA or the trustee bank.

*(80) The trustee bank made no effort of any kind to look out for or protect the interests of its beneficiaries, the debenture holders, in connection with the offering of the new conversion price to them. It did not even take action to warn the debenture holders that the new price offered by DASA might not be a fair or reasonable one and that they should look out for themselves in that connection as best they could. In effect, the bank adopted an extremely limited and narrow concept of its duties to act affirmatively to protect the interests of the debenture holders in the absence of a "default" as defined in the indenture. In fact, the bank concluded that it had no duty of affirmative action at all in the absence of such a default. None of those facts was disclosed to the debenture holders by DASA or the bank.

(81) The March 9 letter and the April 21 supplement thereto both failed to alert those debenture holders who were also common shareholders to the fact that the March 9 solicitation letter did not simply restate information previously distributed in the 1972 proxy statement and annual report but in fact presented much information and many statements that were not included in the other documents, which differed sharply from statements made in the shareholder documents and in some respects contradicted those earlier statements.

(82) The last paragraph of Note A to the Consolidated Statements of Income (Loss) on page 5 of the solicitation letter was materially misleading in that it implied that the \$1,398,500 loss therein stated was non-recurring, not in the ordinary course of business, and was beyond the control of DASA's management. In order to understand that last paragraph of Note A even partially, it would have been necessary for the reader to make a cross-reference (not indicated in the text) to the discussion on page 12 under the heading "Change in Magicall Business."

(83) The March 9 letter failed to disclose and in fact very artfully concealed or obscured the fact that DASA management had (i) reshed improvidently into Magicall sales efforts after the settlement of the telephone strike referred to on pages 5 and 12 ignorant, as the result of its own negligence and unexplained inattention, of the size of A.T.&T. inventories of Magicall units and (ii) continued those ill-advised and extremely costly sales efforts for a six-week period --- all of which cost the financially troubled company many thousands of dollars it could not afford to spend foolishly and contributed greatly to its severe financial problems."

(84) The first full paragraph on page 22 of the sollicitaiton letter was materially misleading in that it implied or suggested that if the debenture holders did not consent to the requested amendment to the Indenture, there would be a "forced liquidation" of DASA and the debenture holders would receive nothing as the result thereof. That suggestion or inference was directly contrary to the underlying facts, because, even if the Equipment and Leases were sold (under a "forced liquidation") at a price lower than that under the Datatron Agreement, there would remain the "approximately

\$4,000,000 in tangible property. . ." referred-to on page 18 (which was separate and distinct from the Equipment and Leases and totally ignored in connection with the reference in the solicitation letter to such imaginary "forced liquidation").

(85) The solicitation letter did not contain, as required by Rule 14a-3(a), as it refers to Schedule 14A, Item 11(a)(v), a statement of the following information: "in the case of options [to purchase securities], the Federal income tax consequences of the issuance and exercise of such options to the recipient and to the issuer".

(86) The solicitation letter did not disclose that (i) DASA management had given serious consideration to the possibility of making, at some point in the then near or foreseeable future, another proposed reduction in the conversion price available only to Debenture holders who would agree to elect, as a condition to receiving such reduced conversion price, to make a simultaneous conversion of their Debent res into Common Stock, thereby forfeiting their right to receive interest payments and (ii) the existence of such a possible future course of action by DASA was one of the reasons why DASA was unwilling at that time to reduce the proposed new conversion price below \$21.00.

(37) The proposed new debenture conversion price of \$21.00 presented in DASA's March 9 solicitation letter was not fair or equitable to the debenture holders.

(88) The proposed conversion price was not selected by fair and reasonable application of sound principles of financial analysis.

(89) The proposed conversion price in fact offered nothing at all of direct and immediate financial benefit to the debenture holders as consideration for their individual and collective "consents" to the proposed sale of computer assets.

(90) The proposed conversion price was seriously unfair and inequitable to the debenture holders in the circumstances.

(91) The financial interests of the debenture holders were not seriously, fairly or equitably considered by DASA management in selecting the proposed new conversion price of \$21.00.

(92) Neither in the March 9 letter nor in the April 21 supplement thereto were the debenture holders fully, fairly, or reasonably apprised of all of the material facts and circumstances relevant to the proposed computer sale transaction or to the issuance of the debenture holder consents thereby solicited.

[CAVEAT: The foregoing proposed findings of fact are substantially, but perhaps not entirely, complete. Plaintiffs reserve the right to make such supplemental additions thereto as their counsel may hereafter consider necessary or appropriate in the circumstances.]

Dated: New York, N.Y.
April 19, 1974

BREWER & SOEIRO
Attorneys for Plaintiffs

By Bradley R. Brewer
Bradley R. Brewer
A Member of the Firm
292 Madison Avenue
New York, N.Y. 10017
(212) 679-8091

NOTICE OF ENTRY

Sir:—Please take notice that the within is a (certified)
true copy of a
duly entered in the office of the clerk of the within
named court on 19

Dated,

Yours, etc.,

BREWER & SOEIRO

Attorneys for

Office and Post Office Address

292 MADISON AVENUE

NEW YORK, N. Y. 10017

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented
for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

BREWER & SOEIRO

Attorneys for

Office and Post Office Address

292 MADISON AVENUE

NEW YORK, N. Y. 10017

To

Attorney(s) for

72 Civ. 1332
Index No.

UNITED STATES DISTRICT
SOUTHERN DISTRICT OF

BROWNING DEBENTURE HO
COMMITTEE, et al.,

Plain

-against-

DASA CORPORATION, et

Defe

NOTICE OF MOTION
&
AFFIDAVIT

BREWER & SOEIRO

Attorneys for Plaintiffs

Office and Post Office Address

292 MADISON AVENUE

NEW YORK, N. Y. 10017

(212) 679-8091

To

Attorney(s) for

Service of a copy of the within

Dated,

Attorney(s) for

Year 19

MICROFILM

OCT 11 1974

This motion is denied.

A-193

T COURT
NEW YORK

OLDERS'

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So Ordered:

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New York, N.Y.
Oct 9, 1974

C.S.A. J.

ON

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is hereby admitted.

CHANGE PLACE, N.Y. 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BROWNING DEBENTURE HOLDERS' :
COMMITTEE, et al., :

Plaintiffs, :

-against- :

DASA CORPORATION, et al., :

Defendants. :
-----x

Civil Action

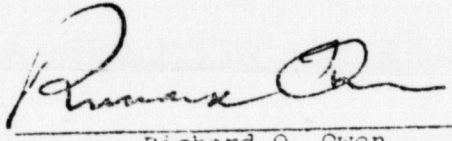
72 Civ. 1332
R.O.O.

JUDGMENT DISMISSING THE COMPLAINT
AS TO CLAIMS 1 and 2

On October 1, 1974, this court rendered a memorandum decision, per Greisa, J., that Claims 1 and 2 set forth in the complaint should be dismissed. Upon motion made before Owen, J., to whom this cause had been assigned, for reconsideration of that order, the court rendered a memorandum, decision and order on July 11, 1974, in which this court denied plaintiffs' motion for reconsideration of the earlier dismissal order and granted plaintiffs' motion for entry of final judgment dismissing Claims 1 and 2. Consequently, it is hereby

ORDERED, ADJUDGED, and DECREED that Claims 1 and 2 set forth in the complaint be and hereby are dismissed on the merits.

Dated: October 11, 1974


Richard O. Owen
U.S.D.J.

A-194

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JEFF KAUFMAN

(an employee of Charger Messenger Service, 101 Park Avenue, NYC 10017) being duly sworn, deposes and says, that deponent is not a party to the action and is over 18 years of age. That on the 3rd day of April 1975 deponent served the within Joint Appendix and Exhibits thereto upon Jacobs Persinger & Parker (attorneys for appellee DASA Corporation) and Breed Abbott & Morgan (attorneys for appellee Arthur Andersen & Co.) at 70 Pine Street, NYC 10005 and One Chase Manhattan Plaza, NYC 10005, respectively, by delivering true copies thereof to them personally.

Jeff Kaufman

Sworn to before me this
3rd day of April 1975

Bradley R. Brewer

BRADLEY R. BREWER
Notary Public, State of New York
No. 31-0411750
Qualified in New York County
Commission Expires March 30, 1977